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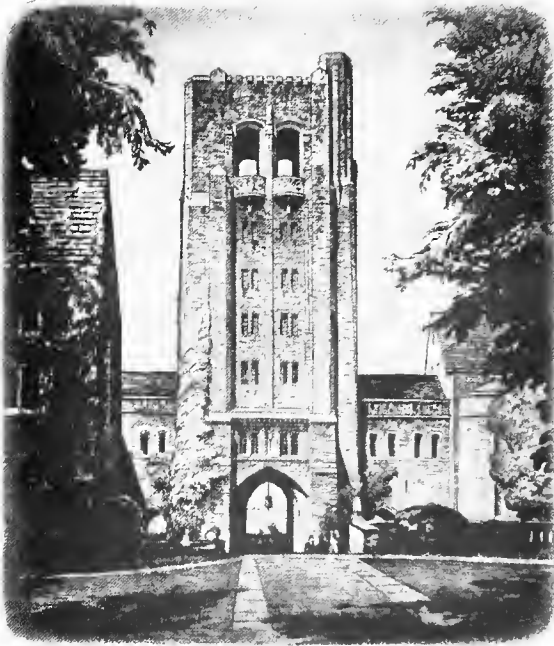
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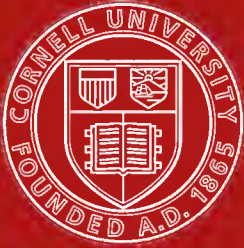
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A STUDY
OF THE
QUESTION OF BOUNDARIES

BETWEEN THE
REPUBLICS OF PERU AND ECUADOR

BY
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INTRODUCTION.

At the request of His Excellency, Sr. D. Felipe de Osma, Envoy Extraordinary and Minister Plenipotentiary of Peru at this Court (Madrid), that I examine and report upon the question of boundaries between the Republics of Peru and Ecuador, submitted to the arbitration of His Majesty, the King of Spain, I have prepared this work, dividing it into two parts: **General Part**, antecedents and history of the case, and **Special Part**, a consideration of the diverse questions embraced therein.

The purpose of the **General Part** is to facilitate the reader in his study of the problem and offer a guide to all the data and events, in their chronological order, that must be considered to enable him to form a general idea of the affair, and to perceive the historical connection of the different facts set forth and the relation of certain of the questions to each other.

That part begins with an exposition of the former *Spanish colonial régime* or governmental system in America, which, being constantly alluded to, it is well fully to understand before entering upon the domain of its application. Then follows an historical review of the insurrectionary movement and of the formation of the *Spanish-American States*, which it is important to present with the greatest clearness because of the confusion with which those events usually recall themselves—occurring, as they did, simultaneously, in so many localities—and also because they were the origin of the so-called “Spanish-American public law,” the basis upon which the question must be resolved. I prefer to relate them at the outset, to the end that there shall afterwards be no interruption in the examination of the various aspects of the problem, and because it will permit, besides, their appreciation in conjunction with each other unprejudiced by any criteria whatever.

Of those States were born those of Colombia and Peru, and, on the dissolution of the Republic of Colombia, Ecuador came into being, when Peru had already been in existence almost ten years. And, without entering into details respecting their formation, which I shall reserve, because of their importance, for a more opportune place, I pass to an explanation of the origin and historical development of *the question of boundaries* existing primarily between Peru and Colombia, and later between Peru and Ecuador, concluding with the history of the *arbitration* from its inception, in 1887, down to the present moment.

I subdivide the **Special Part**, devoted to an examination of the diverse questions comprehended in the general question of boundaries, into *two sections*, which respectively treat of what I designate as *intercolonial boundaries* and *international boundaries*, in order to distinguish between those separating the ancient circumscriptions of the colonial régime, as prescribed by the Spanish law, and those which separate, or ought to separate, the modern States in accordance with international law.

Under the title *intercolonial boundaries*, I consider, first, what were the territories and general boundary lines of the Viceroyalties of Peru and New Granada, and then, separately, and with all necessary detail, those of the Comandancia general of Maynas (that is, the region of the Amazonas) and of Jaén, Guayaquil, Piura and Tumbes, examining the question in its various aspects—juridical, geographical and historical—confining myself to the colonial régime, and independently of any solution afforded by international law concerning the question whether those international boundaries should, or should not, be, in whole or part, the same as the intercolonial. In any event, it is clear that the international question is formulated in the light of a geographical, historical and legal knowledge concerning the Spanish dominions within which are located the contending States.

The question in the second section being founded in *international law*, I proceed to examine into its solution by applying to the *treaties* and *conventions* entered into or proposed between Peru and Colombia and Ecuador, the doctrine of international law particularly relating to Spanish America, and that established by the *Arbitration*.

In the carrying out of this plan, I have sought for my work, in default of other qualities, the order and clearness that are so

essential in the exposition and examination of questions of this nature, always so complicated because of their variety of aspect and the multitude of facts involved, avoiding vagueness and giving attention to documentary proofs of which I furnish a detailed analysis.¹

¹In order to simplify the citations, I have adopted the following *abbreviations*:

B. P.—Brief for Peru (*Alegato del Perú*), by Sr. Pardo y Barreda.

M. P.—Memorial of Peru (*Memoria del Perú*), by Sres. Cornejo and Osma.

D. B. P.—Documents attached to the Brief for Peru, indicating the number of the document or page of the corresponding volume.

D. M. P.—Documents attached to the Memorial of Peru with the same arrangement.

GENERAL PART

ANTECEDENTS AND HISTORY OF THE CASE

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CHAPTER I.

The Ancient Colonies of Spain.

SUMMARY :

- I. The system of territorial division established by the laws of the Indies.
- II. Organization of colonial government in the XVIIth century.—1. Audiencias, gobiernos and corregimientos of New Spain and Peru.—2. The system of audiencias.—3. The government exercised by the Viceroy of Peru in the audiencia districts.
- III. Organic reforms of the XVIIIth century.—1. Viceroyalties of Santa Fe and Buenos Aires; captaincies-general of Venezuela and Chile.—2. The establishment of new audiencias.—3. The creation of intendencias de provincia.
- IV. Great circumscriptions or bounds existing at the beginning of the XIXth century.

§I. System of Territorial Division Established by the Laws of the Indies.

The *Compilation of Laws of the Kingdoms of the Indies*, framed in the time of Philip IV and published by Charles II in 1680, shows the system of territorial division followed by Spain in the civil, ecclesiastical and military organization of her vast dominions in America, from the period when she commenced to systematize the newly discovered countries until the consolidation of her government by the promulgation of that most notable Code.

The original basis of that organization was the division of the American territories made by the Emperor Charles V in 1542, between two great Viceroyalties which he created, one in Mexico and the other in Peru, names which synthetize the conquests of Spain. "We order and decree," says Law 1, Title 3, Book III, of the *Compilation*, "that the Kingdoms of Peru and New Spain (Mexico) be ruled over and governed by the Viceroy who represent our royal person, who shall exercise superior power, do and administer justice equally to all our subjects and vassals, and apply themselves to all that will promote the tranquillity, repose, ennoblement and pacification of those provinces * * *"

The Viceroyalties were divided into *royal audiencias*,² considered as "major provinces," which embraced the *gobernaciones*,³ the *alcaldías mayores*,⁴ the *corregimientos*⁵ and the *alcaldías ordinarias*,⁶ provided for in Law 7, Title 2, Book II; Law 1, Title 15, of the same Book, and Law 1, Title 1, Book V.

In harmony with this civil division, Law 7, Title 2, Book II, above cited, prescribes that there shall be also an ecclesiastical division of the territory into archbishoprics, religious provinces, suffragan bishoprics, parishes and curateships, providing that both divisions shall conform and correspond: that is, the archbishoprics and religious provinces with the *audiencia* districts, the bishoprics with the *gobernaciones* and *alcaldías mayores*, and the parishes and curateships with the *corregimientos* and *alcaldías ordinarias*.

The civil division was not, however, uniform. Viceroyalty governed the greater provinces, that is to say, the territories of the

²The *Audiencia* was a superior judicial tribunal, which, in addition under the ancient colonial régime, was a governing body exercising administrative functions and having civil jurisdiction over one or more provinces; also the name given to the territory over which its jurisdiction extended (*Diccionario razonado de Legislacion y Jurisprudencia*, by *Escríche*).—Translator.

³The names *Gobernación* and *Gobierno* are used interchangeably throughout this work to denote the civil, as distinguished from the military, branch of the colonial governmental entities lesser in extent than the *audiencias*.—Translator.

⁴The *Alcaldía mayor*, as referred to herein, was the jurisdiction of the *Alcalde mayor*, who, as mayor, governed a town of lesser importance than the capital of a province. Though not necessarily a lawyer, he exercised judicial functions similar to those of a justice of the peace (*Escríche*).—Translator.

⁵The *Corregimiento* was the district governed by a *Corregidor*, a correctional magistrate, who, in colonial times, exercised administrative functions over a district (*Escríche*).—Translator.

⁶The *Alcaldía ordinaria*, or jurisdiction of the *Alcalde ordinario*, was similar to the *alcaldía mayor*, but of lesser extent (*Escríche*).—Translator.

audiencias (also called "audiencia districts"). But, as is explained in Law 1, Title 1, Book V, special governors were at times appointed over minor provinces because located at considerable distances from the capitals of the audiencias; and, in other localities, because of the quality of the soil, and their location not appearing convenient for the establishment of heads of provinces or for the appointment of governors, corregidores and alcaldes mayores were appointed for the government of the cities and their subdivisions.

In accordance with Law 3, Title 3, Book III, the viceroys were captains-general of the provinces in their districts; but captaincies-general were also formed for certain determinate territories, whether audiencias or not. These possessed, in greater or less degree, the attributes of government and bore distinct relations of subordination to the Viceroys.

The Viceroys were presidents of the audiencias at the capitals of their Viceroyalties, the other audiencias being presided over by the captains-general, or persons called "presidents togados" (gowned presidents).

From that system of territorial division sprang the terms *Viceroyalties*, *Captaincies-general* and *Presidencies*, to designate the different constituents composing the colonial empire of Spain, and which afterwards formed independent States, although with certain variations effected by the towns that united or separated upon their emancipation.

§II. Organization of the Colonial Government in the XVIIth Century.

1) *Audiencias, Gobiernos and Corregimientos of New Spain and Peru.*—The Kings of Spain reserved to themselves the right directly to fill the offices of viceroy, captain-general, president and associate judge of the audiencias and prescribe the jurisdiction and scope thereof and of the most important gobiernos, corregimientos and alcaldías mayores, these being specified in detail in Law 1, Title 2, Book V, decreed by Charles II at the time of the publication of the *Compilation*, which we should accept as authority as to the manner in which the colonial government of Spain was organized in 1680 in relation to the territory.

Those offices are classified by that law in two groups: "PERU" and "NEW SPAIN."

A) Under the denomination "NEW SPAIN," that is, Mexico, are included, by virtue of an ancient order, the four Royal Audiencias of Santo Domingo (1526), Mexico (1527), Guatemala (1543) and Guadalajara (1548). The order provides that—

a) In the district of the Audiencia of *Santo Domingo* de la Isla Española shall be located the seat of the Governor, Captain-General and President of that Audiencia, the seat of the Alcalde Mayor of the country inland, that of the Governor and Captain-General of the Island of Cuba and City of San Cristobal de la Habana, that of the Governor and Military Captain of Santiago de Cuba, that of the Governor and Captain-General of the Province of Venezuela, that of Governor and Captain-General of the Province of Cumaná, and that of the Governor of Margarita.

b) In the district of the Audiencia of *Mexico*: the seat of the Viceroy-Governor and Captain-General of New Spain (Mexico) and President of that audiencia, the Corregimiento of the City of Mexico, the seat of the Governor and Captain-General of the Province of Yucatán, that of Castellano, the Alcalde Mayor and Military Captain of the castle of Acapulco, the Alcaldías mayores of Tabasco, Tacuba and Montepeque and the Corregimiento of Veracruz.

c) In the district of the Audiencia of *Guatemala*: the seat of the Governor, Captain-General and President of that audiencia, those of the Governors and Captains-General of Comayagua, Honduras and Costa Rica, those of the Governors of Nicaragua and Soconusco and the Alcaldes mayores of Verapaz, Chiapa, Nicoya, Sonsonate, Zapotilán, San Salvador and Minas de Honduras.

d) In the district of the Audiencia of *Guadalajara*: the seat of the Governor and President of that audiencia, the Gobierno and Captaincy-General of Nueva Vizcaya and the Corregimiento of Zacatecas.

B) Under the name of PERU, the law of Charles II, by virtue also of an ancient order, comprehends the seven Royal Audiencias of Panamá (1535), Lima (1542), Santa Fe de Bogotá (1549), Charcas (1559), Quito (1563), Chile (1609) and Buenos Aires (1661), and provides that—

a) In the district of the Audiencia of *Panamá* shall be located the seat of the Governor and Captain-General of the Province of Tierra Firme and President of that audiencia, the seat of the Governor and Captain-General of the Province of Veragua, the

Gobierno of the Island of Santa Catalina and the Alcaldia mayor of the City of San Felipe de Portobelo.

b) In the district of the Audiencia of *Lima*: the seat of the Viceroy, Governor and Captain-General of the Kingdom of Peru and President of that audiencia, the Corregimientos of Cuzco, Cajamarca, Santiago de Miraflores de Zaña and villages of Chiclayo, San Marcos de Arica, Collaguas, Andes de Cuzco, the towns of Ica, Arequipa, Guamanga, the city of San Miguel de Piura and ports of Paita (a single corregimiento) and Castro-Virreina.

c) In the district of the Audiencia of *Santa Fe*: the seat of the Governor and Captain-General of the New Kingdom of Granada and President of that audiencia, those of the Governors, Captains-General of the Provinces of Cartagena, Santa Marta, Mérida and Lagrita and of Trinidad and Guayana, the Gobierno of Antioquia, the Corregimientos of Tocaima and Vague, of the cities of Tunja and Los Musos.

d) In the district of the Audiencia of *Charcas* (upper Peru, now Bolivia): the seat of the President of that audiencia in his capacity of gowned judge (*en ministro togado*), the Governor and Captain-General of Santa Cruz de la Sierra, the Gobierno of Chucuito, the Corregimientos of Potosí, La Paz and San Felipe de Austria and the Minas de Oruro, and the Alcaldía mayor of the Minas de Potosí.

e) In the district of the Audiencia of San Francisco de *Quito* (now Ecuador): the seat of the President of that audiencia in his capacity of gowned judge, the Gobiernos of Popayán (part of this gobierno belongs to the Audiencia of Santa Fe), the Governors of Quijos, Jaén de Bracamoros and Cuenca, the Corregimientos of Quito, and the cities of Loja and Zamora and the Minas de Zaruma, and that of Guayaquil.

f) In the district of the Audiencia of *Chile*: the seat of the Governor and Captain-General and President of the audiencia, and that of the Inspector-General of the army and prisons of that province.

g) In the district of the Audiencia of Trinidad and Port of *Buenos Aires*: the seat of the Governor and Captain-General of the Provinces of the Rio de la Plata and the President of that audiencia, the Gobierno and Captaincy-general of the Provinces of Paraguay, and the Gobierno of Tucumán.

As will be seen, therefore, all Spanish-American territories are classified by this law of 1680 in the two great groups of NEW SPAIN and PERU—that is to say, the Viceroyalties of those names—and

subdivided into *audiencia districts*, each of which comprises various minor gobiernos, corregimientos and alcaldías mayores.

2) **The System of Audiencias.**—The division into audiencias was not merely judicial, but general in character and well defined. Law 1, Title 15, Book II, of Philip IV, shows that, throughout the kingdoms and seigniories of the Indies up to that time discovered, there had been established *twelve* royal audiencias and chancelleries (the eleven mentioned and that of Manila) “in order that our vassals may be provided with those who will *direct* and *govern* them in peace and justice, and their districts have been divided into gobiernos, corregimientos and alcaldías mayores, which are subordinated to the royal audiencias * * *” and the boundaries of each of those districts are prescribed in this same Title.

The Emperor Charles V, creator of the two Viceroyalties of New Spain and Peru, was also the monarch who created the four Audiencias of New Spain and the first three established in Peru (Panamá, Lima and Santa Fe), their number being completed with the creation by Philip II of the Audiencias of Charcas and Quito, by Philip III of that of Chile, and by Philip IV of that of Buenos Aires.

By virtue of the above-mentioned law, which also *prescribes the duties* of these officers, the *heads* of the audiencia district of *New Spain* were: for that of Mexico, its own Viceroy, Captain-General, Governor and President; for that of Guadalajara, a Governor-President, and for those of Santo Domingo and Guatemala, the Captains-General, with powers of governor and president.

As to the districts of the audiencias of *Peru*, the *heads* were: for that of Lima, its own Viceroy, Governor and Captain-General of Peru, and President of that audiencia; for those of Quito and Charcas, gowned judges; for those of Panamá, Santa Fe, Chile and Buenos Aires, Captains-General, with powers of governor and president.

3) **Government Exercised by the Viceroy of Peru in the Audiencia Districts.**—The governing powers of the Viceroy of Peru with respect to the audiencia districts were diverse.

Philip II, in 1566 and 1567, conferred upon them the “authority and capacity, *in themselves alone*, to possess and exercise the executive power” in the audiencia districts of Lima, Charcas and Quito (Law 6, Title 3, Book III), although declaring, in 1568, that the presidents of Quito and La Plata (Charcas) could exercise powers of government in certain cases (Law 5, Title 1, Book V).

On the framing of the *Compilation*, Philip IV established the principle that the Viceroy possessed superior powers of government over the Audiencia districts of Lima, La Plata, *Quito*, Panamá and Chile (Law 1, Title 16, Book II). With respect to Panamá, he decreed that the President-Governor and Captain-General be instructed that he must obey the Viceroy and execute orders given by him in matters of government, war and finance, as his superior officer (Law 2, Title 1, Book V); and, as to Chile, it was provided on its creation by Philip III, and confirmation by Philip IV, that the President-Governor and Captain-General should govern and exercise the functions of administration wholly and absolutely, except in matters of justice and those which pertained to the Viceroy of Peru, to whom he is subordinated (Law 12, Title 15, Book II, and Law 2, Title 1, Book V). It is recommended, however, that the Viceroy of Peru and the Audiencia of Lima should not intervene in the Government of Chile except in cases of grave importance (Law 30, Title 3, Book III).

From the laws relating to the governments of the Santa Fe and Buenos Aires audiencias it may be deduced that they enjoyed a high degree of autonomy. Law 7, Title 15, Book II (of Charles V, Philip II and Philip IV), after establishing the organization and boundaries of the Audiencia of Santa Fe de Bogotá, of the new Kingdom of Granada, continues: "And we command that the Governor and Captain-General of those provinces and the President thereof possess, use and exercise, by himself alone, the powers of government over the whole of the district of that audiencia, the same as such are possessed and exercised by our Viceroy of New Spain * * * and despatch all business and matters arising out of the government." And Law 13 of the same title (of Philip IV), after establishing also the organization of the Audiencia of Trinidad, Port of Buenos Aires, comprising therein the Provinces of the Rio de la Plata, Paraguay and Tacumán (which territories are segregated from the Audiencia of Charcas), provides that to the Governor and Captain-General of those provinces and President of that audiencia "pertains exclusively the duty to decide in all cases and matters relating to government. * * *"

Such was the organization of the colonial empire of Spain in America, according to the laws of the Indies as set forth in the *Compilation* published by Charles II in 1680.

§III. Organic Reforms of the XVIIIth Century.

1) **Viceroyalties of Santa Fe and Buenos Aires; Captaincies General of Venezuela and Chile.**—In the XVIIIth century that territorial division was altered by the creation of two more Viceroyalties—those of New Granada and Buenos Aires—which were constructed out of territories taken almost wholly from the jurisdiction of the Viceroyalty of Peru.

The *Viceroyalty of Santa Fe or New Granada*, created primarily in 1717 and abolished in 1723 for various reasons, was re-established by royal decree of August 20, 1739. It was founded on the structure erected out of the Audiencia district of Santa Fe de Bogotá, of the new Kingdom of Granada, with the addition of the provinces of the Audiencia districts of Panamá and San Francisco de Quito, belonging to the Viceroyalty of Peru, and the Comandancia of Caracas, or Province of Venezuela, which had been an appanage of the Viceroyalty of New Spain.

Subsequently the boundaries of the Viceroyalty of Santa Fe were reduced by the institution of the *Captaincy-General of Venezuela*, with an independent government and its own audiencia (1742, 1777 and 1786), and the restitution to the Viceroyalty of Peru of the province of Maynas (1802) and Guayaquil (1803 and 1806), of the Audiencia of Quito.

The *Viceroyalty of Buenos Aires* was created July 7, 1778, from the Audiencia districts of Buenos Aires and Charcas and certain territories of Chile. The Audiencia of Charcas, later called Chuquisaca, or Upper Peru, returned to form a part of the Viceroyalty of Peru in 1810.

The *Captaincy-General of Chile*, which already had come to enjoy a high degree of autonomy, acquired it completely by virtue of the royal decree of March 15, 1798.

2) **New Dispositions as to the Audiencias.**—The colonial régime underwent two more important changes during the last third of the XVIIIth century: the reform of the audiencias and the creation of the provincial intendencies.

By virtue of the royal decrees of April 6th and June 20, 1776, the institution of the audiencias was altered; regents (presidents of courts of audiencia) were created and their honors and prerogatives, their powers as to internal management of the audiencias and their relations with the Viceroys and other authorities were minutely

prescribed. And, although the honorary presidency was left to the Viceroys and Governors, the regents were from that time the real presidents of the audiencias. Such importance was attached to their duties that, in the absence of the Viceroy or delegation of the latter's powers, the regent was charged with the despatch of business of a civil and political nature.

3) **Creation of the Provincial Intendencies.**—Most transcendental in the administrative system was the creation of the office of provincial intendent, instituted by Philip V in Spain, in imitation of France (1718), and which Charles III established in America, at first in the Viceroyalty of Buenos Aires (1782), and, later, in that of Mexico, in conformity with the famous ordinance as to intendents for the armies and provinces of New Spain, enacted in 1783 and made to extend to the other Spanish dominions.

In accordance with that ordinance, which contained 306 articles, an intendent was required to be placed at the head of each *province*, charged with the enforcement of the laws, the government of the towns, the decision of political and financial matters, the surveillance and supervision of the administration of justice, and he was also to retain in his charge the administration of the army.

It was this intrusion of the intendents in the command of the army that supplied the motive for the royal decree of December 16, 1802, in conformity with which the great powers delegated to them were limited to those of a purely governmental and economic nature, not conflicting with the authority of the captains and commandants-general, in whom alone resided the authority relative to the command, security and defence of their respective forces and provinces.

In 1803 a new Ordinance of Intendents was published, preserving the essential features of the former ordinance and introducing modifications counselled by experience.

The creation of the intendents was important, in that it brought about the operation of administrative functions on the basis of the *provinces* instead of audiencias and regulated the territorial division, determining the provinces and their subdivisions, corresponding to each circumscription.

§IV. Great Circumscriptions in Existence at the Beginning of the XIXth Century.

On the initiation of the insurrectionary movement, Spain's dominions stood divided and organized into the seven great circumscriptions following: the Viceroyalty of *Mexico* in North America, the Captaincy-General of *Guatemala* in Central America, the Viceroyalty of *New Granada* and the Captaincy-General of *Venezuela* in the northern part of South America, the Viceroyalty of *Peru* in the center of South America and the Captaincy-General of *Chile* and the Viceroyalty of *Buenos Aires* in the southern part.

Each of those great circumscriptions embraced one or more audiencias, various provinces governed by intendents, and different inferior governmental entities (districts, lieutenantcies, corregimientos, etc.).

CHAPTER II.

Formation of the Spanish-American States.

SUMMARY:

- I. States springing from the Viceroyalty of New Spain.—1. Mexico.—2. Central America: Guatemala, Salvador, Honduras, Nicaragua and Costa Rica.
- II. States springing from the Viceroyalty of Buenos Aires.—1. The Argentine Republic.—2. Paraguay.—3. Uruguay.
- III. States springing from the Viceroyalty of New Granada.—1. The insurrection up to 1819.—2. The Republic of Colombia (of Bolivar).—3. The present Republics of Venezuela, Colombia and Ecuador.
- IV. States springing from the Viceroyalty of Peru.—1. Chile.—2. Peru.—3. Bolivia.

§I. States Springing From the Viceroyalty of New Spain.

Let us see how, from the immense colonial empire we have described arose the modern Spanish-American States, which, as we have said, it is important to remember in order to understand well the facts set forth and the conclusions with respect to the present case that must be drawn from the formation of those States.

For more perfect clearness, we shall group the new States with reference to their issue out of the ancient Viceroyalties.

1) **Mexico.**—The disagreements of the Spaniards, owing to their doubt as to whether they should yield obedience to Ferdinand VII or to the Supreme Junta established in the Peninsula as a result of the French invasion of 1808, and the weakness of the authorities who replaced the Viceroy Iturrigaray (deposed by those who suspected him of bearing little affection for the sovereignty of that monarch), all favored the insurrectionary movement in Mexico, which began with the so-called "*grito de Dolores*" (war cry of Dolores) hurled forth by Hidalgo, the parish priest of the town of that name, in 1810. That attempt failing, others were launched by the Priest Morelos (1812), and Mina (1817); both uprisings were quelled by the arms of Spain.

The news of the revolution in Spain in 1820 revived the insurrection; at its head was placed General Itúrbide, who rose in revolt, and put forth, in the town of Iguala, a manifesto—the so-called “project of Iguala”—on the 24th of February, 1821. In that manifesto was proclaimed the independence of Mexico, under a monarchy which was to be tendered to Ferdinand VII or his brothers, on condition that they should always reside therein. The Viceroy compromised to the extent of consulting the Spanish government as to the project; and, the proposal having been answered in the negative, Itúrbide, assuming the name of Augustine I, caused himself to be proclaimed *Emperor* of Mexico, in May, 1822, first by the troops and later by the Congress, which by that time had been convened. Ten months afterwards he found himself forced to abdicate (March, 1823), and a new Congress proceeded to frame the “Federal Constitution of the United States of Mexico,” published in October, 1824. The independence of the new *republic* was definitely assured by General Santana’s victory over the Spanish forces at the battle of Tampico in 1829.

2) **Central America.**—Except for certain isolated attempts at insurrection, the provinces of the ancient Captaincy-General of Guatemala, which comprised Central America, remained submissive until the proclamation of the independence of Mexico, when they also declared themselves independent on the 15th of September, 1821, and—peacefully, however—united with the Mexican empire of Itúrbide; but, on the dissolution of the empire, in March, 1823, they met in a constituent assembly, and, in July of the same year, ratified their independence, not only with respect to Spain, but Mexico also, and from all other powers in the world. That assembly framed the constitution of the *United States of Central America* of November 22, 1824, thus forming a republican confederation composed of the five States of *Guatemala, Salvador, Honduras, Nicaragua* and *Costa Rica*, and having its own constitution.

The confederation so formed lasted fourteen years, when, the federal compact having been broken by the Congress of 1828, the present *republics* of Central America, bearing the same names as the States above mentioned and completely independent of each other, were born.

§II States Springing From the Viceroyalty of Buenos Aires.

1) **Argentine Republic.**—The insurrection of the Viceroyalty of Buenos Aires began in the city of that name in May, 1810, with the dismissal of the Viceroy and the institution of a junta which started to govern in the name of Ferdinand VII. In 1811 that junta was replaced by a triumvirate which framed the "Provisional Ordinance for the Government of the United Provinces of the Rio de la Plata." On the 9th of June, 1816, after various vicissitudes, a congress, convened at Tucumán, proclaimed the independence of the "Confederate States of the Rio de la Plata," which remained definitively separated from Spain. They, however, passed through diverse constitutions of the republican system of government, federal and centralized, until they took the present name of the Argentine Republic.

2) **Paraguay.**—Paraguay, which belonged to the Viceroyalty of Buenos Aires, did not wish to respond to the call of the Junta of that town, but, acting on its own account, and by a single stroke, achieved its independence in 1811. A republic was at once instituted, which, by one congress, was organized under the leadership of two consuls (1813), and, by another, under one consul (1814), and continued an effective existence for a most extended period under continual dictatorship (of Dr. Francia and of López).

3) **Uruguay.**—The district of Uruguay, which constituted the so-called "Eastern Border" of the Viceroyalty of Buenos Aires, separated from Spain in 1814 after the Spanish general had evacuated Montevideo, declaring itself independent in a congress convoked by General Artigas. The disorders following upon the emancipation supplied the motive for the occupation of that territory by the Portuguese from Brazil (1817) and its annexation to that country (1821) under the name of the Province of Cis-Platina; but, on Brazil's separation from Portugal in 1822, Uruguay again declared herself independent and, by so doing, brought about a war between Brazil and the government of Buenos Aires. That war terminated by the recognition, favored by England, of the "Eastern Republic of Uruguay."

§III. States Springing From the Viceroyalty of New Granada.

1) **The Insurrection down to 1819.**—The revolutionary movement was initiated almost simultaneously in Venezuela, New Granada and Quito and was similar, in the matter of principle involved, in the constitution of juntas recognizing Ferdinand VII and in pronouncements of a political nature, but with different aspects and result afterwards, until 1819, in which year the fate of the ancient Viceroyalty was decided.

The insurrection of the Captaincy-General of *Venezuela* began on the 19th of April, 1810, at its capital, Caracas; the revolutionary junta of which, in 1811, convoked and assembled a congress that proclaimed the independence of Venezuela (July 5) and formed a republican constitution (December 21). This first movement having been suppressed, another more important resulted. In its forefront appeared the celebrated Simón Bolívar, afterwards called the Liberator, who ratified, in 1813, the declaration of independence of Venezuela, established and exercised at Caracas (of which he was a native) a dictatorial government, and extended by his arms the insurrectionary movement.

The revolution of *New Granada* was principally focused upon Santa Fe de Bogotá, which rose against the Viceroy in June, 1810, and, in 1811, assembled a congress whereby it was constituted an independent State under the name of Cundinamarca, and attempted to form a confederation of the other provinces of that ancient kingdom. Another congress, calling itself the Congress of the "United Provinces of New Granada," was convoked with that object in view. It assembled in October, 1812, and proclaimed the independence. From the first moment, however, it stumbled, in its work of organization, against the obstacles of rivalry among the provinces represented and the protests of those who would not lend their support, until at last it reached the determination to commit the government to Bolívar as Captain-General (January, 1815); but the fortunes of war were favorable to the Spaniards, and, after the taking of Cartagena (1816), the insurrection of New Granada may be considered as having been suppressed.

The movement in *Quito* was of no real importance, since it was confined to the formation of one junta to govern in the name of Ferdinand VII (1809), and of another to present to the Council of

Regency in the Peninsula (1810) the grievances against the President of the Audiencia (1811), and to the assembling of a congress, the members of which never arrived at an understanding among themselves. The whole movement terminated with a complete submission to the Spanish authorities in 1812.

2) **The Republic of Colombia (of Bolívar).**—In February, 1819, a congress convoked by Bolívar assembled at Angostura (Venezuela), and, having sanctioned the emancipation of Venezuela and its constitution as an independent State, equipped Bolívar with the means to prosecute the insurrection throughout the Viceroyalty. This Bolívar undertook, crowning his efforts with success at the decisive battle of Boyacá, in Granadan territory, on the 7th of August of the same year, and assuring, not only the independence of Venezuela, but the emancipation of New Granada. On the 17th of December, 1819, the same congress resolved "that the Republics of Venezuela and New Granada stand from this day united in one republic under the glorious title: *Republic of Colombia*"; but the Congress of Angostura was composed only of deputies from the provinces of Venezuela and of but one from New Granada, the deputy from Casanare. Consequently, as much to complete the representation as to organize definitively the new republic, the assembly of another congress at Cúcuta was agreed upon.

There was then assembled, therefore, at Rosario de Cúcuta, a constitutional congress composed of representatives of the twenty-two Venezuelan and Granadan provinces already emancipated. That body ratified the "Constitution of the Republic of Colombia" on the 30th of August, 1821, declaring that the territory of the republic should be that embraced within the ancient Viceroyalty of the Kingdom of New Granada and the Captaincy-General of Venezuela.

The Presidency of Quito, even though as a part of the Viceroyalty of New Granada, it was embraced in the new republic by the Congress at Angostura, continued to remain under the authority of Spain. Bolívar, therefore, exerted every means to emancipate and attract it, fomenting insurrection and sending General Sucre, who caused the insurrection to triumph completely at the battle of Pichincha in 1822. After this, Quito resolved, at an assemblage of citizens in May of that year, to declare herself independent of Spain and to join and form part of the republic.

The Republic of Colombia endured until 1830, shortly prior to

the death of Bolívar, when it dissolved, bringing into existence other States. In order that that republic may not be confounded with the one bearing the name at the present time, let us call the earlier one the "Republic of Bolívar," since he was its founder and it lived and died with him.

3) **The Present Republics of Venezuela, Colombia and Ecuador.**—These are the three States into which the Republic of Bolívar was separated in the year 1830.

The Republic of *Venezuela*, which was the ancient Captaincy-General of that name, on the 22d of September of that year proclaimed the constitution framed by the congress convoked by General Páez.

The State which had been the Kingdom of New Granada constituted itself, in 1831, the republic of that name. It underwent changes in name from time to time, being known successively as the Granadan Confederation (1858), the United States of Colombia (1861) and the *Republic of Colombia* (1886), which it retains at the present time.

The Republic of *Ecuador* was organized by a congress in 1830 with three out of the twelve departments into which the Republic of Bolívar was divided. These were Quito, Guayaquil and Azuay (springing from the ancient Audiencia of Quito), to which they united Cauca (which had belonged to New Granada).

§IV. States Springing From the Viceroyalty of Peru.

1) **Chile.**—The movement in the Captaincy-General of Chile began at its capital, Santiago, in the month of September, 1810, with the formation of a governing junta, and invoked the name of Ferdinand VII, which, as we have seen, had become the general rule at that time. The movement soon developed into revolution, the Chileans struggling against each other for power. Because of those dissensions, the Viceroy of Peru had little difficulty in suppressing the revolution in 1814; but, on General San Martín's placing himself at the head of the insurrection in 1817, with the support of Buenos Aires, and, after winning the battles of Chacabuco and Maipú, the independence of Chile was achieved in 1818 and an assembly at once proceeded to frame the constitution of the republic (1822).

2) **Peru.**—Peru remained faithful to Spain until 1820. In that year an Argentine-Chilean army invaded its territory under the command of General San Martín, who in his march excited the country to revolt. After his entry into Lima on the 28th of July, 1821, he proclaimed its independence and convoked a congress at that capital (1822), before which he presented himself and resigned his powers, committing the government of the republic to a junta. Afterwards the advance of the Spanish troops and internal dissensions forced the Peruvian Congress to ask help from Bolívar, who entered Lima September 21, 1823, and was invested with dictatorial powers. Bolívar succeeded in securing the independence of Peru by the battles of Junín and Ayacucho (1824), and, for the purpose of organizing the government according to his own ideas, he caused to be adopted, in 1826, the constitution he had that same year given to Bolivia. With that constitution, however, the Peruvians were not satisfied, and, the Liberator having retired, a new congress, assembled in July, 1827, framed another, which was published in 1828.

3) **Bolivia.**—The region called Upper Peru, composed of the Provinces of Charcas, La Paz, Cochabamba, Potosí and Santa Cruz de la Sierra, which had formed the ancient Audiencia and Gobierno of Charcas, with its capital at La Plata, rose in insurrection in 1818 (after some abortive attempts in 1810), and succeeded in emancipating itself, with the support of Bolívar and Sucre, in 1825. A congress, assembled at Chuquisaca (formerly La Plata and afterwards Sucre) solemnly proclaimed its independence on the 6th of August, 1825, calling the new State the "Republic of Bolivia," in remembrance of the Liberator. In May, 1826, that general caused the Congress to adopt a very complicated constitution (providing for three chambers), which was soon repealed (1828), and replaced by another in 1831.

CHAPTER III.

Historical Review of the Question of Peruvian Boundaries.

SUMMARY:

- I. Relations of Peru with the first Republic of Colombia.—1. Origin of the question in 1822.—2. Mosquera-Monteagudo treaty of the same year.—3. Galdeano-Mosquera Convention of 1823 (not ratified).—4. Strained relations (1826); war (1828-9).—5. Guayaquil treaty of peace and amity of 1829.
- II. Relations of Peru and Ecuador.—1. Treaty of peace and alliance of 1832.—2. Conferences at Quito in 1841.—3. Disagreements of the governments and breaking out of hostilities.—4. Guayaquil treaty of peace and amity of 1860 (not ratified).—5. Incidents down to 1887.

§I. Relations of Peru with the First Republic of Colombia.

Entering now upon the question to which this work relates, we offer a review showing how it has developed historically down to the period of its present status, without stopping, however, for details or commentaries which must later be the object of our study when we examine its diverse aspects.

The Republic of *Colombia* was created by the forces of Bolívar out of the union of the 'Captaincy-General' of Venezuela with the Viceroyalty of New Granada, and, upon its emancipation after the battle of Pichincha in 1822, the province of Quito, which had formed part of the Viceroyalty, expressly adhered.

That republic bordered on Peru along the southern part of the Viceroyalty of New Granada, for, upon the formation of the two States, Guayaquil and the Province of Quito had remained in *Colombia*, while the Province of Jaén and the Comandancia general of Maynas had remained in the new State of *Peru*. She considered those territories as belonging of right to her, because, although they had been parts of the ancient Kingdom of Quito, Jaén united with Peru on its emancipation, and the Comandancia general of Maynas passed into dependency upon the Viceroyalty

of Lima by a royal decree of Charles IV in 1802. We shall not now discuss the rights of the matter, but merely cite the facts in order to disclose the respective positions.

From the birth of both States (Colombia and Peru) down to 1826, the relations between them were very cordial, principally because each looked upon Bolívar, the Liberator, as its supreme chief, and, although the question of boundaries was agitated, those relations were not disturbed in the least degree. The question was discussed with the utmost tranquillity and the two States continued in the possession of their respective provinces.

1) **Origin of the Question in 1822.**—At the beginning of the year following the proclamation of the independence of Peru (July 28, 1821) its government published the regulations for the election of the constituent congress which was to assemble at Lima.

In consequence thereof, on June 20, 1822, General Joaquín Mosquera, the representative of Colombia at Lima, asked for an explanation concerning the convocation of the inhabitants of Quijos and Maynas (the two ancient gobiernos which had been included in the Comandancia general of Maynas in 1802), the fact being, he said, that, as those territories had been part of the ancient Viceroyalty of New Granada (Audiencia of Quito), they belonged to Colombia. Mosquera was satisfied with the explanation given him by the Peruvian Minister, to the effect that the inhabitants on the other side of the Marañón were not taken into account in computing the apportionment of the number of deputies. That, however, constituted no obstacle to the representation of the Province of Maynas (or Amazonas region) in that congress and all subsequent congresses.

2) **Mosquera-Monteagudo Treaty of 1822.**—On the 15th of July, 1822, this same General Mosquera, as Plenipotentiary of Colombia, and Monteagudo, as Minister of State of Peru, signed a treaty of peace and alliance between the two republics, in the 9th article of which it was stipulated that: "The demarcation of the *exact* boundaries which must divide the territories of the Republic of Colombia and the State of Peru will be settled by a *special agreement* after the next constituent congress of Peru may have empowered the Executive of that State to adjust this point; and the differences which may occur concerning the matter shall be determined by the conciliatory and peaceful means proper as between two sister and confederated nations."

3) **Galdeano-Mosquera Convention of 1823** (not ratified).—The governments of Peru and Colombia named, respectively, D. José María Galdeano and D. Joaquín Mosquera as their special representatives to negotiate the agreement as to boundaries above mentioned.

In his note of December 3, 1823, the representative of Colombia proposed the following solution: "Both parties recognize, as the boundaries of their respective territories, the same that the Viceroyalties of Peru and New Granada had in the year 1809, from the outlet of the river Tumbes in the Pacific ocean to the territory of Brazil."

On the 17th of the same month the representative of Peru replied, stating that, although nothing appeared to him more consistent than that the republics constructed out of the territories of the ex-Viceroyalties of Peru and New Grenada should preserve the same boundaries that divided the governments in the year 1809, still one could not proceed at once to fix those boundaries without acting rashly and exposing the principle to contradiction by topographical errors.

The representatives being in accord, therefore, they signed at Lima, on the 18th of December, 1823, the "convention" which bears their name, but in which it is only stipulated that "both parties recognize, as the boundaries of their respective territories, the same that the former Viceroyalties of Peru and New Granada had in 1809." That agreement was rejected by the Congress of Colombia because of its ambiguity—really, however, because the second part of Mosquera's proposal was suppressed.

4) **Strained Relations (1826); War (1828-9).**—In 1826 the amicable relations between Colombia and Peru began to be strained because of the opposition developed against Bolívar in his own Republic (as a result of which he had stayed away for a considerable time), and because of the discontent of Bolívar himself, who, after leaving Peru in that year, saw the Peruvians rise against his common leadership over both republics and the undoing of his favorite work, the Bolivian constitution.

On the 7th of March, and again on the 2d of December of the same year, the representative of Colombia objected to the inclusion of the provinces of Jaén and Maynas in the convocation of 1826 for elections to the Peruvian Congress that was to reform the constitution, protesting in his last specification against the appointment

of the Bishop of Maynas, which he regarded as an act of aggression against the sovereignty of Colombia.

The various complaints of the republic were formulated in the official letter addressed by the Minister of Foreign Relations of Colombia to the Plenipotentiary of Peru on the 3d of March, 1828, in which he said: "As to *Jaén* and *Maynas*, whether bearing in mind the principle that has invariably guided all the American States to refrain from encroaching upon the limits possessed by the great divisions of our continent as colonies, or whether remembering the endeavors to which those provinces really owe their independence, it is clear that the attempt to retain them as Peruvian territory must be characterized as usurpation."

The tenseness in the relations caused by the disagreement with Bolívar, who was annoyed by the Peruvian rejection of his constitution and offended by the press of that country, and whose political work was impaired by the insurrectionary movements of Bolivia and Colombia which he attributed to the Peruvian government, developed into a war between the two States, having various results. Peru was defeated at Tarqui but continued in possession of Guayaquil which she had occupied, all of which we shall carefully explain at the proper time.

5) **The Guayaquil Treaty of Peace and Amity of 1829.**—On the 28th of February, 1829, the day following the battle of Tarqui, where the Peruvian army was routed, the generals commissioned for that purpose signed a *preliminary peace convention* on the field of Girón, establishing the basis for a definitive treaty. Article 2 of the agreement provided that the contracting parties, or their respective governments, should appoint a commission to settle the boundaries of the two States, "the political division of the Vice-royalties of New Granada and Peru in August, 1809, when the revolution of Quito broke out, to serve as the basis, and binding themselves to cede reciprocally those small portions of territory which, by reason of the defects of an inexact demarcation, operate to the injury of the inhabitants." On the ratification of the agreement, on the first of March, General Sucre placed his signature to the declaration that, in proof of the love borne by the government of Colombia for the Peruvian people, "it did not wish to take a grain of sand from her territory."

As soon as the war was at an end, the governments of Peru and Colombia appointed plenipotentiaries to draw up the defin-

itive treaty. D. José Larrea y Loredó and D. Pedro Gual were named respectively and met at *Guayaquil* in the month of September, 1829, holding six *conferences*, at which, among other questions, they occupied themselves with the matter of boundaries. The plenipotentiary of Colombia stated that if the State he represented had not approved the Galdeano-Mosquera convention, it was because "it did not in itself provide the means for reaching a conclusion and thereby preventing annoyances which its indecision could cause to both countries."

The result of those conferences was *the treaty of peace and amity* between Peru and Colombia signed at Guayaquil on the 22d of September, 1829, by the plenipotentiaries mentioned.

In its text that treaty says:

"Art. 5th. Both parties recognize, as the boundaries of their respective territories, the same that were possessed before their independence by the ancient Viceroyalties of New Granada and Peru, with such variations only as they may judge convenient to agree on between themselves; to which effect they obligate themselves from the present moment, reciprocally to make those cessions of small parcels of territory which may contribute to fix the divisionary line in the course most natural, exact and calculated to avoid contentions and vexations between the authorities and inhabitants along the frontiers.

"Art. 6th. In order that this last result may be obtained as expeditiously as possible, it has been agreed, and is hereby expressly agreed, that there shall be constituted and appointed by both governments a commission, composed of two persons for each republic, who shall survey, rectify and fix the divisionary line in conformity with the stipulations in the preceding article. That commission shall, with the concurrence of the respective governments, place each of the parties in possession of the territory to which it may be entitled, accordingly as it proceeds with the recognition and tracing of said line, beginning from the Tumbes river at the Pacific Ocean."

In the 7th Article the terms were fixed within which the commission had to discharge its duties, adding, that if the commissioners should not agree as to one or more points, these should be brought to the attention of their respective governments in order that the latter might resolve them amicably and expeditiously and without prejudice to the commission in continuing its labors to a conclusion.

And article 19 provided that, if doubts should arise as to the interpretation of any articles of the treaty, or as to the application of Article 6th, and the two governments should fail to arrive at an un-

derstanding, the point should be submitted to a friendly government "whose decision shall be absolutely obligatory on both."

In order to put this treaty into effect, a commission was designated to establish the boundaries; but it could not begin its labors, as it ceased to exist without having accomplished anything because of the disintegration and demise of the State of Colombia in 1830.

§II. Relations of Peru with Ecuador.

1) **Treaty of Amity and Alliance of 1832.**—On the formation of the State of Ecuador in 1830 after the dissolution of Colombia, by the voluntary union of three departments which had been provinces of the ancient Audiencia of Quito, the question of its boundaries with relation to Peru arose.

The Bishop of Quito, having appointed a Prefect of Missions for Maynas in 1831, the Government of Peru, in its note of the 20th of September, demanded of Ecuador an explanation, manifesting its surprise at the appointment, inasmuch as the territory of Maynas belonged to Peru, its diocese being suffragan to the Metropolitan of Lima, and having always been occupied by persons designated by that government by virtue of its indisputable right of patronage. The Government of Ecuador replied on the 7th of November, regretting the incident, which it ascribed to an excess of zeal on the part of the Bishop, in an effort, by the establishment of missions, to succor, as expeditiously as possible, the spiritual needs at that point, saying also that, on the giving of the permission to the prelate, he had been cautioned to place himself in accord with the proper authorities of Peru in order to avoid any annoyance, but without prejudice by this to the question of boundaries.

Ecuador was a new State; at its institution it had not convoked the inhabitants of Jaén and Maynas, those provinces being in the possession of Peru; and the States mutually recognized each other by the treaty of Lima of the 12th of July, 1832, approved by their congresses. It is worthy of note that in the Congress of Peru were seated deputies from Jaén and Maynas, and that, in order to negotiate that treaty, the Plenipotentiary of Ecuador began by ignoring the treaties of Colombia.

This treaty of 1832, in Article 15th, stipulated that, "during the negotiation of *an agreement* for the settlement of *boundaries* between the two States, *the present* boundaries shall be recognized and respected." That is to say, the boundaries of those territories which

they comprised when they mutually recognized each other as such States.

After the treaty of 1832, no other was sanctioned and ratified until the arbitration of 1887.

So many attempts were made to settle the question of boundaries, however, that none ever arrived at an ultimatum.

2) **Conferences at Quito in 1841.**—In the month of December, 1841, the plenipotentiaries of Peru and Ecuador, D. Matías León and D. José Félix Valdivieso, met at Quito to negotiate and conclude, upon solid foundations, the treaties most appropriate for the welfare of both countries. They conferred on various questions, and particularly on the question of boundaries.

The Plenipotentiary of Ecuador proposed, at the second conference, that they should recognize, as the boundaries of their respective territories, the same that were possessed by the ancient Viceroyalties of New Granada and Peru before their independence, "it being, in consequence, agreed that the Provinces of Jaén and Maynas be restored to the Republic of Ecuador, in the same limitations in which they were possessed by the Presidency of Audiencia of Quito," without prejudice to the concessions which the two States might make in special agreements for the purpose of obtaining a natural and suitable dividing line; and at the third of these conferences they determined what that dividing line should be, fixing it point by point, with the result that for Ecuador were left the towns and territories of the ancient provinces of Jaén and Maynas, situated on the northern bank of the Marañón river, and, for Peru, all the territories and towns which the Spanish government had assigned to the Gobernacion of Jaén, on the southern bank of the Marañón, and which the Arrowsmith map denominated as Luya and Chillaos.

The Plenipotentiary of Peru recognized the advantage of mutual concessions by the parties in order to fix the line more adequately—based, nevertheless, on the ancient boundaries of the Viceroyalties of Peru and New Granada—but added that he had always noted and heard that the province of Maynas had been a dependency of the former, and opposed the fixing of those boundaries in the absence of instructions to that end.

The conferences terminated badly, however, because of the failure of the conferees to agree also as to other questions and considerations of a political character. The Plenipotentiary of Peru stated that he

would continue no longer in the performance of his mission and that he would request his passport for departure, as it appeared to him indecorous to remain near a government the representative of which had made declarations so offensive as to reveal a hostile attitude toward his government.

3) **Disagreements of the Governments and Breaking Out of Hostilities.**—In order amicably to adjust the diplomatic embroglio resulting from the conferences of Quito and to settle pending matters, the governments negotiated for *further conferences*, delegating General Daste as Plenipotentiary of Ecuador and D. Guillermo Charún, Minister of State of Peru, who met at Lima on the 13th of April, 1842; but the conflict was only further aggravated by the intemperate form in which General Daste presented the complaints of his government against that of Peru, demanding that "as a prerequisite to any settlement, the immediate restoration of the Provinces of Jaén and Maynas be stipulated, the only means by which the affront can be wiped out." The conference, therefore, came to an end at the very outset and the relations between the two governments remained interrupted.

Those relations resumed, they were again broken in 1853 on account of the question of boundaries.

Conformably to the principle of *uti possidetis*, adopted by the American Republics, and by virtue of the Royal Decree of July 15, 1802, separating those territories from the Viceroyalty of new Granada and restoring them to Lima, the Government of Peru, on the 10th of March of that year, issued a decree creating the *political and military government of Loreto*, which embraced, from the boundary of Brazil, all the territories located on the north and south of the Amazonas and Marañón rivers, as well the rivers which emptied into them. Against this act the Republics of Ecuador and New Granada protested. To those protests, however, Peru replied, maintaining her rights over the territories which had constituted the ancient Comandancia of Maynas.

In November of the same year the Government of Ecuador presented to Congress a *projecto de ley* (draft of a law) in which freedom of *navigation* was declared for the Chinchipe, Santiago, Morona, Pastaza, Tigre, Curaray, Huanaca and other "*Ecuadorian rivers*," which the proposed law stated emptied into the Amazonas river; and the Government of Peru protested in its turn, invoking the above-cited Royal Decree of 1802; in reply to which the Gov-

ernment of Ecuador insisted that that Royal Decree had no force in law; that it had never been put into execution and ought not to be enforced.

Four years later, in 1857, on learning that Ecuador was about to pay part of her English indebtedness by the *cession of certain territories* located between rivers flowing into the Amazonas, Peru renewed her protest, insisting upon her argument of *uti possidetis* and the Royal Decree of 1802. To this the Government of Ecuador rejoined that in 1810 the provinces of Jaén and Maynas and the territory on the northern shores of the Amazonas belonged to the jurisdiction of the Presidency of Quito, because said royal decree was neither valid nor in effect.

Thus the question of boundaries proceeded, increasing more and more in bitterness as it became complicated in political events, until diplomatic relations were severed and Peru began hostilities, occupying Guayaquil. That condition of affairs was brought to an end by the peace protocol of December 4, 1859, which was to serve as the basis of a definitive treaty.

4) **Guayaquil Treaty of Peace and Amity, 1860** (not ratified).—After declaring that the good relations between the two republics were fully re-established and giving all kinds of satisfaction for past occurrences, the treaty takes up the question of boundaries, providing, in Article 5, that “the Government of Ecuador, upon consideration of the documents presented by the Peruvian representative, among which the Royal Decree of July 15, 1802, is given chief place in support of the rights of Peru to the territories of Quijos and Canelos, declares *null* and of no effect the *adjudication* of any part of those territories to the British creditors.”

And adding, in Article 6, that the Governments of Ecuador and Peru agree to adjust the boundaries of *their respective territories* and to appoint, within a term of two years, reckoning from the exchange of ratifications of the present treaty, a mixed commission which, in accordance with observations to be made and proofs to be submitted by both parties, should *establish the boundaries* of the two republics. In the meanwhile, the republics were to accept, as such boundaries, those based on the *uti possidetis* recognized in the fifth article of the treaty of September 22, 1829, between Colombia and Peru, and which were possessed by the ancient Viceroyalties of Peru and Santa Fe in conformity with the *Royal Decree* of July 15, 1802.

The treaty signed at Guayaquil on the 25th of January, 1860, was ratified there on the 26th by General Castilla as President of Peru, and, on the 27th, by General Franco, as the Chief Executive of Ecuador.

But, on the deposition of General Franco from power and the assembling at Quito of a convention for the reconstruction of the government, the new government rejected the treaty; and, on its part, the Peruvian Congress also withdrew its ratification on January 28, 1863, taking the position that it had not been in negotiation with an actual government of Ecuador but rather with the chief of a party or faction; and, as to the question of boundaries, Peru insisted that the principle of *uti possidetis* of 1810 once accepted by the treaty of 1829, and she having proven her rights by the Royal Decree of 1802 and the documents found in the archives of the ancient government of Maynas, there remained only to exact from Ecuador their explicit recognition.

5) **Incidents down to 1887.**—The new constitution of Ecuador, promulgated March 10, 1861, provided that "the boundaries of the Republic shall be definitely fixed by treaties to be entered into with bordering States." But Ecuador, without taking into account the provisions of the treaty of the year before, or waiting until others should be negotiated, published a law of *territorial demarcation* on the 29th of May of that year. In that law were included, as belonging to that republic, the "territories situated in the Gobierno of Jaén, of the ancient Kingdom of Quito, the Cantons of Napo and Canelos, the territories constituting the Gobierno of Quijos, as far as the Amazonas, in the Kingdom of Quito, and the territory of the Gobierno of Maynas." To this Peru had to protest in her note of August 24th, setting forth her rights and the absence of authority in one State to legislate respecting matters of property and ownership pertaining to another.

It is thus that matters progressed, except with regard to incidents of little moment—such as the request by Quito in 1875 for the scientific exploration of the Morona river—down to 1887, in which year the Government of Ecuador reverted to its project to *cede* part of the territories of Maynas to her British creditors in settlement of debts, which was the cause of the hostilities of 1858, and against which the Government of Peru again protested, both republics thereafter joining in the present *arbitration*.

CHAPTER IV.

The Arbitration of His Majesty, the King of Spain

SUMMARY:

- I. Arbitral convention of 1887.
- II. Direct negotiations.—1. García-Herrera treaty of 1890 (rejected).—2. Protocol of 1891 as to the Spanish arbitration.—3. Supplemental arbitral convention of 1894 (not ratified).
- III. Prosecution of the Spanish arbitration.—1. Cornejo-Valverde protocol of 1904.—2. Arbitrations of Colombia with Ecuador and Peru.—3. Peru's *modus vivendi* with Colombia and with Ecuador.
- IV. Claims formulated by the parties to the Spanish arbitration.—1. Claims of Peru: (a) briefs, (b) final memorial.—2. Claims of Ecuador: (a) historical-juridical statement and memorial of 1902, (b) final memorial.

§I. Arbitral Convention of 1887.

In consequence of the protests of the Government of Peru against the proposal of Ecuador, above mentioned, to cede to her creditors part of the northern territories of Maynas, both republics determined to submit their differences to arbitration, without prejudice, however, to a settlement by means of direct negotiations.

To this effect the convention of Quito of August 1, 1887, "amicably to put an end to the questions of boundaries pending between the two nations" was negotiated.

In Article 1, the Governments of Ecuador and Peru "submit said questions to His Majesty, the King of Spain, for his decision as *arbiter of the right*, definitively and without appeal."

Through the medium of plenipotentiaries (as stated in the three following articles), the governments are simultaneously to urge the acceptance of the appointment by His Catholic Majesty within eight months, reckoned from the exchange of ratifications. A year after such acceptance by the August Arbitrator, the plenipotentiaries are to present to His Majesty, or to such minister as he may designate, a statement wherein shall be set forth the claims of their respective governments, accompanied by documents supporting and giving weight to the legal arguments in the case. The plenipotentiaries are

given authority, from the day on which such statements or briefs shall be presented, to receive and answer all communications which the August Arbitrator may deem proper to transmit to them, in such prudent terms as they may choose, and also to abide by all rulings which he shall dictate with the object of making clear the rights of the parties.

And in Article 6 it is determined that, before the rendition of the final arbitral decision, both parties shall pledge themselves most bindingly to settle, by means of direct negotiation, all or any of the points involved in the question of boundaries, and that, if those settlements should be verified and duly effectuated, they shall be brought to the knowledge of His Catholic Majesty, thereby concluding the arbitration, or leaving it open as to those points remaining unsettled. Failing agreement by direct negotiation, the arbitration is to proceed to its fullest extent as stipulated in Article 1.

On the exchange of ratifications of that convention, the Plenipotentiary of Peru, D. Juan M. Goyeneche, in the name of the government he represented and of the Republic of Ecuador, which had also empowered him, appeared before His Catholic Majesty to solicit his acceptance of the appointment as arbitrator. The acceptance was given by His Majesty on the 24th of December, 1888, with an expression of his lively satisfaction at the good will that inspired the parties, and his interest in the tranquillity of the Spanish-American States.

Before the expiration of the following year, i. e., on the 10th of December, 1889, the Chargé d'affaires of Peru, D. José Pardo y Barreda, presented to Her Majesty, the Queen Regent of Spain, the *Brief* of that Republic, with its documentary proofs. Ecuador did not present hers until 1892, having awaited the results of the direct negotiations that had been undertaken.

§II. Direct Negotiations.

1) **García-Herrera Treaty of 1890 (rejected).**—By virtue of the stipulations in Article 6 of the arbitral convention, the Government of Ecuador invited Peru, on the 1st of October and the 29th of December, 1888, to negotiate a direct settlement of the boundary question, and Peru, having accepted the second invitation, D. Arturo García and D. Pablo Herrera were appointed plenipotentiaries of Peru and Ecuador, respectively. After holding several conferences,

they signed, at Quito, on the 2nd of May, 1890, the treaty that bears their names, in which they established, by way of compromise, and with necessary details, the divisionary line between the two republics.

That treaty was approved by the Congress of Ecuador on the 18th of June of the same year, but the Peruvian Congress, in approving it on the 25th of October, 1891, introduced two important modifications, suggesting to the Government that, in the event of Ecuador's refusal to accept them, the two points be referred to the arbitration of the King of Spain, on which conditional proposal it insisted on the 25th of October, 1893, following some observations by the government. As a result, the Congress of Ecuador concluded by rejecting the treaty, on the 25th of July, 1894, and directed its government to open further direct negotiations.

2) **Protocol of 1891 as to the Spanish Arbitration.**—On the 9th of January, 1891, after the García-Herrera treaty had been signed and was pending legislative ratification, the Minister of Foreign Affairs of Ecuador and the Chargé d'affaires of Peru met at Quito and agreed, at the request of the former, to inform His Catholic Majesty of all that had transpired and ask him to suspend his final decision until the conclusion of the pending negotiations.

At that conference the representative of Peru stated that his government had already complied with the duty of presenting its *Brief* to His Majesty within the year agreed upon, and the representative of Ecuador explained that his government, in November, 1889, also within that period, had delivered to the Ambassador of His Majesty at Paris a *Statement* in which an order was sought (from the Arbitrator) appointing a commission to negotiate a direct settlement, without, however, formulating a complaint or submitting the Ecuadorian titles. He said, however, that that action did not signify a failing in respect for the arbitration of His Majesty, as had been supposed, and that, in proof of this, there would be presented, before the convening of the Peruvian Congress, a new *Brief* destined to facilitate the decision of the Spanish sovereign in case the pending treaty should not be ratified and it should be necessary to proceed with the arbitration.

The representatives then agreed that it should be understood that, with that *Statement* of November 2nd, the arbitral proceeding should be renewed "without prejudice to the rights of Ecuador and Peru to amplify their first statements at the proper time."

And, finally, they declared that, in the definitive settlement of the boundary question in the treaty of 1890, the stipulations referred only to the rights of Peru and Ecuador without prejudice to those which might be put forward by a third nation, these latter to be the subject of subsequent negotiation with the party in whose favor judgment might be rendered, with no responsibility whatever on the other party.

3) **Supplemental Arbitral Convention of 1894** (not ratified).—Aware of the disposition of Peru and Ecuador to negotiate anew, and believing that she ought to be recognized as entitled to the portion of the frontier lying between the Napo and Caquetá (or Yapurá) rivers, Colombia asked leave, on the 13th of August, 1894, to participate in those negotiations; and her intervention being accepted by the other two, the three republics respectively designated their representatives, who, after holding several conferences, on the 15th of December, 1894, signed a convention supplementary to the arbitral convention of 1887.

By its first article, Colombia acquiesced in the arbitration of the King of Spain, but, since it appeared that the high contracting parties had stipulated that the Royal Arbitrator should render judgment upon a consideration, not only of the titles and arguments on the *law*, "but also the *accommodation* of the contracting parties, reconciling them so that the frontier line may be founded upon law and *equity*," the convention in force was also modified.

If, stated the fifth article, this convention should be rejected by Peru or by Ecuador, or both, the arbitral convention of August 1, 1887, shall continue in force between the two nations, and Colombia shall be at liberty purely and simply to adhere thereto within ninety days, to be reckoned from her official ratification of such rejection.

The supplemental convention was ratified by the Congresses of Peru and Colombia, but Ecuador abstained from any action whatever, in consequence of which the Government of Peru, after a useless wait of ten years, withdrew its ratification in January, 1904. Its Government in that way gave notice to the Governments of Ecuador and Colombia, which had not made use of the right reserved in Article 5, to adhere to the arbitration of 1887.

SIIL. Prosecution of the Spanish Arbitration.

1) **Cornejo-Valverde Protocol of 1904.**—The direct negotiations having then been broken off, there was a meeting on the 19th of February, 1904, between D. Miguel Valverde, Minister of Foreign Relations of Ecuador, and D. Mariano H. Cornejo, Plenipotentiary of Peru. The latter proposed, in the name of his Government, that they should forthwith proceed with the arbitration of 1887, and request His Majesty to send a royal commissioner to study the archives at Quito and Lima and gather the necessary information. The Minister of Ecuador accepted the proposal but insisted that the proceeding "should not imply, and could not imply, any alteration in the conditions established by the treaty of 1887, and much less the modification or renunciation of the titles and *Briefs* submitted to the Royal Arbitrator by either party." This was confirmed by the Plenipotentiary of Peru.

The Governments of Peru and Ecuador, therefore, besought of the King of Spain the continuation of the arbitral proceeding and the appointment of the commissioner. His Majesty complied with the request April 27, 1904, designating for that duty, under the appellation of "Special Commissioner," D. Ramón Menéndez Pidal on the 21st of November of the same year.

2) **Arbitrations of Colombia with Ecuador and Peru.**—On the 5th of November, 1904, *Ecuador* and *Colombia* entered into a convention to settle the question of their boundaries, submitting to the arbitration of the Emperor of Germany. Ecuador makes it clear, in Article 7, that the territories in the eastern region, from the course of the Napo river to the course of the Caquetá or Yapurá river, are not included in the arbitration submitted to the King of Spain. But, in another protocol, signed by Sres. Cornejo and Valverde on the 27th of January, 1905, the former stated that those territories were embraced in the eastern region, the Royal Decree of 1802 having extended to all of them, and it was agreed to suspend Ecuador's boundary arbitration with Colombia until that between her and Peru should be concluded.

On the 12th of September, 1905, the Governments of *Peru* and *Colombia* negotiated another convention relating to boundaries in which the matter was submitted to the arbitration of His Holiness the Pope, but with the covenant, in Article 2, that such arbitration

should stand subordinate to that between Peru and Ecuador pending before the King of Spain, and that it should only be effective in the event that territories claimed by Colombia should be adjudged to belong to Peru.

3) **Peru's Modus Vivendi with Colombia and with Ecuador.**— On the 12th of September, 1905, above referred to, *Peru* joined *Colombia* in a *modus vivendi* until the conclusion of the arbitrations, agreeing to establish two zones for provisional occupation, one to the north of the Putumayo river for Colombia, and the other to the south of the same for Peru (between the Cobuya and Cotuhé rivers, inclusive).

On the 29th of January of that year a *modus vivendi* had already been agreed upon between *Peru* and *Ecuador*, on the initiative of the Spanish Commissioner, Sr. Menéndez Pidal. He had stated that he thought it would be an advantage to begin his labors with a conciliatory measure, to the effect that they should not maintain military garrisons in the Napo region, which had been the theater of scenes of bloodshed, and that the two countries by this means would demonstrate their good intentions towards each other and their respect for the regulations prescribed by His Majesty. It was agreed that Ecuador should retire to Quito the forces which she had maintained in Aguarico, and Peru, to Iquitos, those which she had in Torres-Causana, without, however, being understood by this action as abandoning possession.

§IV. Claims Formulated by the Parties to the Spanish Arbitration.

When, in 1904, it was agreed to proceed with the Spanish arbitration, there had already been presented to His Catholic Majesty by the high contracting parties the *statements* or *Briefs* in defense of their rights, with the corresponding evidence.

The proceeding renewed, His Majesty designated the special commissioner who was to go to America and appointed the commission charged with the examination of the question submitted for the royal decision.

Later, on July 14, 1905, the Spanish Minister of State set a time for the presentation of the *final memorials*, which in fact the parties have already delivered, together with the documents they have thought serviceable for proving their allegations.

1) **Claims of Peru.**

a) *Brief.*—In the Brief subscribed at Madrid on the 10th of December, 1889, by D. José Pardo y Barreda, Chargé d'affaires of Peru, that power asked the Royal Arbitrator to decide:

1st. That the frontier between Peru and Ecuador ought to separate the territories which belonged, at the time of the independence, to the Viceroyalties of New Granada and Peru.

2nd. That to the Viceroyalty of Peru belonged—

a) The territories of the Comandancia general of Maynas, in conformity with the provisions of the Royal Decree of July 15, 1802;

b) The territories of the District of Piura, of the Intendency of Trujillo, and

c) The territories of the Gobierno of Guayaquil.

3rd. That the territory of the Gobierno of Jaén belonged to the Viceroyalty of New Granada.

4th. That the Government of Peru accepts, on its part, the compensation* of the territories of the Gobiernos of Guayaquil and Jaén; and,

5th. That, as Peru is not in possession of all the territories which are hers by right, Ecuador is under obligation to restore those which she unlawfully retains in her power.

And he, therefore, prays that there be established, as the boundaries of the Republic of Peru, the line which unites the following points: the Machala river; the water-sheds of Saruma; the Alamor river and the ravine of Pilares; the Macará river, from the mouth of the Alamor to its source in the Espíndula ravine; the Canchis river as far as its confluence with the Chinchipe; the town of Pante; the Agoyán falls; the Eastern chain of the Andes, called successively Cotopaxi, Cayamburu, Andaquíes and Mocoa, and the Yapurá river from its source to the mouth of the Apaporis (*Brief for Peru—Alegato del Perú*—p. 188).

b) *Final memorial.*—In its final memorial, subscribed June 1, 1906, by the Plenipotentiaries D. Mariano H. Cornejo and D. Felipe de Osma, the Government of Peru states:

1st. That it does not countenance, in the slightest degree, Ecuador's pretension to the heirship of ancient Colombia;

* *Compensación*—used here in a technical sense, to indicate set off, or mutual relinquishment of claims, as appears hereinafter in the author's argument.—Translator.

2nd. That it rejects absolutely, therefore, the treaty of 1829, negotiated with Colombia and not with Ecuador;

3rd. That this proceeding should be decided exclusively upon consideration of the general principles of right, the agreements between Ecuador and Peru and upon colonial law, to be consulted only as a means of determining the extent of each of the contiguous provinces;

4th. That Peru, therefore, accepts the principle of colonial titles as the basis for demarcation of boundaries, but not as title to recovery, and, much less, as the basic principle of South American nationalities;

5th. That it rejects absolutely the absurd proposal to reconstruct the Audiencias and Viceroyalties, because the colonial titles alone are applicable to fix the frontiers of the colonial entities—that is, of the provinces that have voluntarily constituted the present States;

6th. That, on Peru's recognition of Ecuador's independence, she recognized the legitimate exercise of sovereignty by which three provinces had formed a new State and it is permissible only to discuss the boundaries of those provinces, and,

7th. The powers of demarcation which may be conferred by a boundary arbitration cannot be stretched so far as to change or reconstruct a nationality freely chosen by the colonial circumscriptions called Guayaquil, Jaén, Tumbes and Loreto.

His Majesty is, therefore, prayed "to reject, in express terms, the demand made by Ecuador for restitution, and to fix *the frontier of the contiguous provinces*, that is to say, the frontier between Jaén and Loja, between Loreto (formerly Maynas) and Pichincha and between Tumbes and Guayaquil in conformity with the line indicated in the Brief," which is reproduced (Memorial of Peru—*Memoria del Perú*—vol. IV, p. 154).

The *Brief for Peru (Alegato del Perú)* comprises one volume of text and two of documents (93), and the final *Memorial (Memoria final)* comprises four volumes of text and seven of exhibits (253), that is to say, a total of *fourteen* great printed volumes (346 documents), accompanied by maps and photographic reproductions.

2) Claims of Ecuador.

a) *Historical-juridical statement of 1892*.—What might be called the *Brief for Ecuador (Alegato del Ecuador)* is made up of a volume published at Quito in 1892, comprising a *Statement (Exposición)* addressed to His Majesty by the Minister, D. Pablo Herrera.

and a Memorial on the facts and law (*Memoria historico-jurídica*), written by Dr. D. Honorato Vásquez.

In his *Statement* Sr. Herrera maintains that the treaty of 1829 between Peru and Colombia is in force, and asks the Royal Arbitrator so to hold and to order the Governments of Peru and Ecuador to appoint the Commission to establish the divisionary line in accordance with Articles 5 and 6 of that treaty, taking as a basis the royal decrees creating the Viceroyalties or Audiencias instead of that of July 15, 1802. He says that the attached *Memorial* of Dr. Vasquez constitutes an "integral part" of his *Statement* and reserves "the right to amplify and extend the arguments in favor of Ecuador as circumstances may require."

Dr. Vasquez' *Memorial* of 1892 concludes by saying that, in view of what has been set forth, "the Government of Ecuador *prays* His Majesty, the Royal Arbitrator, to deign to decide:

"First. That the Governments of Ecuador and Peru shall appoint, within a period to be fixed by His Majesty, the commission provided for in Article 6th of the treaty of 1829, in order that the divisionary line between the two States may be surveyed, rectified and fixed upon the basis of the demarcation of the ancient Viceroyalties of New Granada and Peru—a basis for demarcation conforming with the territorial extent determined in the royal decree that erected, in 1563, the ancient Audiencia and Presidency of Quito, wholly incorporated in the Viceroyalty of New Granada, first in 1717 and later in 1739, in consonance with the tenor of the titles of that epoch, exhibited by the Colombian plenipotentiary who negotiated the treaty of 1829, when the articles concerning boundaries were drawn up. On this basis the *line claimed* by Ecuador runs as follows:

"The mouth of the Tumbes river in the Pacific Ocean, expressly established in the treaty of 1829;—the course of that river as far as the most southern point in that course;—a line to the Lamor river;—the course of that river to its confluence with the Chira river;—the course of the Chira to its confluence with the Macará river;—the course of that river to its source;—from there the line traced in the Guayaquil-Jaén section of the Brief (that is to say, as far as Chuchunga, including the province of Jaén in Ecuador, see page 339);—from the 'embarcadero' on the Chuchunga, a line to the east as far as Jeveros, so that that town lies within the Ecuadorian frontier;—from Jeveros, another line in the same direction, which, cutting across the course of the Huallaga and Ucayali rivers, continues as far as the confluence of the Galvez (Ygarape-pichuna) river with the Yavarí, the course of the Yavarí, as far as Tabatinga, the point from which the Ecuadorian Government will treat con-

cerning territory, with the Government of the United States of Brazil.

"Second. That, on this basis, the two Governments can regularize the line by means of respective and reciprocal cessions of territory, observing, as to the rest, the provisions in the treaty of 1829 for the demarcation of frontiers."

b) *Final Memorial*.—We understand this to be founded principally on the supposititious *Pedemonte-Mosquera protocol* of 1830, since it claims, as the dividing line, the one established in that conference by the Plenipotentiaries of Peru and Colombia.

Leaving until later the explanation of those qualifications, we may designate the line asked for by Ecuador in her final Memorial from a consideration of the minute, or preliminary unsigned draft (only the names of the supposititious signers appearing) which is inserted in the Memorial of Peru (Documents attached to Memorial of Peru—*Documentos de la Memoria del Perú*, vol. I, p. 194).

"The upper waters of the Marañón river, from the mouth of the Yurati (Yavarí?) until it meets the Guancabamba river, and, along the course of that river, to its source in the Cordillera (mountain ridge), and from there, taking a line to the Maçará river in order to reach the headwaters of the Tumbes river."

The Memorial alleges that the Peruvian Minister accepted this line but substituted the mouth of the Huancabamba for that of the Chinchipe river, which would mean leaving the province of Jaén in Peru. That point was left pending further consideration.

As Ecuador has probably decided it in her own favor, we believe she will ask for the whole of the line which she supposes was proffered by Mosquera in order to include the province of Jaén, claimed by her.

SPECIAL PART

A CONSIDERATION OF THE DIVERSE QUESTIONS

SECTION FIRST

Intercolonial Boundaries

SPECIAL PART

A CONSIDERATION OF THE DIVERSE QUESTIONS.

PRELIMINARY CHAPTER

Statement of the Case and Classification of the Questions.

SUMMARY:

- I. Statement of the case.—1. Geographical point of view: (*a*) line from the Pacific to the source of the Macará river, (*b*) frontier of the Province of Jaén, (*c*) frontier of the Amazonas region, (*d*) synthesis of the diverse claims formulated.—2. Legal point of view.—3. Historical point of view.
- II. Classification of the questions into two groups: as to (1) inter-colonial boundaries and (2) international boundaries.

§I. Statement of the Case.

Having given a general idea of the case, showing its antecedents and its historical development, let us now consider the various questions involved. To this end we shall begin by treating the case in the concrete, according to the results of the method in which it appears to have been presented and discussed in the present arbitral proceeding.

This case, in its very nature, is essentially *juridical*, since it deals with a controversy between two States over their respective rights, and should be determined, also, in accordance with right. But those rights refer to territories which have passed through various vicissitudes of ownership and jurisdiction, and, for this reason, the case is also *geographical* and *historical*.

Of these three aspects of the case, the first of importance to its comprehension and decision is the *geographical*, because it is necessary first to know what territories are being spoken of and in what the object in dispute consists.

1) **Geographical Point of View.**—In order the better to understand the differences existing between the lines of demarcation claimed by Ecuador and Peru in the present arbitration, we shall divide the frontier into *three parts*, omitting details of description for the sake of clarity: first, from the Pacific coast to the source of the Macará river; second, the frontier of the province of Jaén, and, third, the frontier of the Amazonas region.

a) *From the Pacific to the source of the Macará.*—Of the three lines sought in the arbitration, two of them (separate) by Ecuador, are alike in that they begin at the Pacific coast and terminate at the source of the Macará river, in the first part of the frontier which extends to the province of Jaén.

They conform also in following along the Macará from its source until it is joined by the Alamor, and for some distance along the Alamor at its upper waters, thus separating the Peruvian department of Piura from the Ecuadorian department of Loja.

They differ, however, in that Peru takes for the point of departure in the Pacific the mouth of the Jubones or Machala, follows along the course of that river as far as the point where her present boundary terminates with it south of Guayaquil, and intersects, in a straight line, from the point at which this boundary ends, in order to unite it, through the water-sheds of Saruma, with the source of the Alamor. The two lines claimed by Ecuador begin in the Pacific, at the mouth of the Tumbes, and follow the course of that river, the one first claimed intersecting the Tumbes, at its southernmost part, to unite it by an artificial line (which runs through part of Paíta) to the Alamor, where that river doubles around the Célica ridge, and the last line claimed continues along the Tumbes as far as its headwaters and the source of the Alamor.

From this it will be seen that Peru demands the preservation of her present boundaries of the coast province of Tumbes with Guayaquil (by the Machala) and with Loja (by the water-sheds of Saruma), and the boundaries of her department of Piura with Loja also (by the Alamor and the Macará). Ecuador's two lines mean *taking away* from Peru nearly two-thirds of the *littoral province of Tumbes*, cutting through it by means of the river of that name; and the line first claimed means depriving her further of a *piece of Paíta*, the triangle formed by the Tumbes, the Alamor and the straight line connecting them from north to south.

b) *Frontier of the Province of Jaén.*—The two lines claimed by

Ecuador connect the source of the Macará with the "embarcadero" of the Chuchunga in the Marañón river, which is equivalent to *taking from Peru the whole of the province of Jaén*, which forms an integral part of her, since, on the emancipation of that province, it voluntarily incorporated itself in Peru.

The line first demanded by Ecuador as the frontier of that province connected the source of the Macará with the Huancabamba to designate the west, abandoned that river on reaching the south, in order to fix a lower boundary, and, intersecting the Marañón, took the bank of that river for the east, for the purpose of including lands which she believed to belong to this ancient province and reach the "embarcadero" at Chuchunga. The line she finally claims is more simple and moderate; it runs from the Chuchunga along the Marañón, takes in the Huancabamba at its mouth, follows it as far as its source and connects with the Macará.

Peru, maintaining her right to retain the province of Jaén, asks only the establishment of its northern boundary, connecting the source of the Macará with that of Canchis in order to follow that river to its confluence with the Chinchipe, the southern point of the Amazonian frontier.

e) Frontier of the Amazonas region.—The Royal Decree of July 15, 1802, constituted the Comandancia general of Maynas, which it incorporated with the Viceroyalty of Peru, embracing therein all of the region watered by the Marañón, or Amazonas, and its affluents north and south—that is to say, the so-called Amazonas region.

In the present arbitration, Ecuador demands from Peru the greater part of this region, having first claimed as frontier an artificial line, nearly straight, below the Marañón from the "embarcadero" at Chuchunga to the frontier of Brazil, at the point of confluence of the Gálvez river with the Yavarí. In her Final Memorial she claims, as a dividing line, the Marañón itself from Chuchunga to Tabatinga (the boundary point of Brazil).

Peru claims the entire Amazonas region, demanding, as her western frontier with Ecuador, the line which begins with the Chinchipe from the mouth of the Canchis and goes by the cordillera of the Andes as far as the Caquetá or Yapurá river, embracing all the territories of which the Comandancia general of Maynas was composed.

Therefore, whether the northern part of the Amazonas region is to remain the property of Peru or whether it shall pass to Ecua-

dor, depends upon the establishment of the line along the cordillera of the Andes, or the line along the Marañón.

d) *Synthesis of the diverse claims formulated.*—The result of the comparison between the frontier lines aspired to by Peru and Ecuador was that Ecuador claimed that there should be turned over to her: a great part of the coast province of *Tumbés* and a small part of the province of *Paita*, the whole of the province of *Jaén* and an immense expanse of the Peruvian departments of Loreto and Amazonas, called by Ecuador the *Eastern region*, lying between the Caquetá, or Yapurá, river on the north, the cordillera of the Andes, the Chinchipe and Marañón rivers to the west, Brazil to the east and what Ecuador called her “Amazonian line,” or the Marañón river, to the south.

In the controversy must be included, however, the Ecuadorian province of *Guayaquil*, because, although Peru recognizes that it ought to continue to belong to Ecuador, this is only on condition that Ecuador shall recognize that Jaén shall continue to be Peruvian, the legal situation of both being similar.

2) *Legal Point of View.*—According to the Arbitral Convention of 1887, His Majesty the King of Spain must decide as arbiter of the *right* “the question of boundaries *pending* between the two nations.”

What are those pending questions, and by what legal criteria, or on what legal basis, should the Arbitrator decide them? Logic would seem to require that we should *commence* by studying them, inasmuch as they affect the very competency of the judge to render a decision; but, since they presuppose and require a full knowledge of the elements and aspects of the whole problem, we believe that they should be last in the order of our investigation and study, so that the condition in which it was found when the arbitration was initiated may be thoroughly understood.

It will instantly be apparent that, as this is an *arbitration of right*, every idea of compromise is incompatible, and that the *international* law is applicable, because there is to be decided a controversy between wholly independent States.

The question being founded in international law, we shall have to examine the bases set forth by the respective parties and arrive at our opinions through the threefold viewpoint of the history of the treaties, the doctrinary principles and the conditions prescribed in the arbitration. The treaty of 1829 between Peru and Colombia

and the supposititious Pedemonte-Mosquera protocol of 1830 are subjects for the most careful study because on them Ecuador mainly depends for the justification of her aspirations, and Peru denies the subsistence of the former and the authenticity of the latter.

Furthermore, both parties adduce arguments based on *colonial law* and Peru contributes others founded in modern *political law*. Because of this, and as the question really requires it, it must be considered in the light both of colonial and political law, although from the viewpoint of international law as well, since only where international law agrees with the precepts and principles of colonial and political law can we accept their support in a controversy between two sovereign peoples.

3) **Historical Point of View.**—It will be noted from what we have said that this affair possesses an historical aspect so important as to require a review of the entire history of the contending peoples from the first demarcation of their territories by the Spanish sovereign down to the present status of their relations with regard to boundaries.

Ecuador claims the reconstruction of the ancient Audiencia of Quito in its original demarcation, holding herself forth as its inheritor because of its having once formed a part of the Viceroyalty of Santa Fe and subsequently of the Republic of Colombia as founded by Bolívar. Peru insists that the primitive demarcation be given no consideration, but, rather, that those existing at the time of the independence be held as effective, and this not for the purpose of dismembering the present States but to fix the boundaries of the ancient provinces which gave them birth, denying Ecuador's heirship of the rights of Colombia (to which she was not herself entitled) and defending her rights on the theory of her own institution and conservation of her territorial sovereignty. And thus the legal discussion is continually interwoven with history, except when the doctrines or the texts of the treaties are considered, and, even to interpret the texts of the treaties, their historical precedents must be taken into account.

§II. Classification of the Question Into Two Groups: As to (1) Intercolonial Boundaries, and (2) International Boundaries.

The general question of boundaries involves, then, diverse special questions: legal, geographical and historical. How may these be classified to the best effect for their explanation and examination?

In our opinion, by dividing them into two groups, accordingly as they refer to *intercolonial* boundaries or to *international* boundaries.

Even though Spain did not denominate her American possessions as "colonies," calling them instead kingdoms, provinces and seigniories of the Indies, we shall make use of the term "*intercolonial boundaries*" for the purpose of designating those which separated the different parts of her dominions, so that they may be distinguished from those which separate, or ought to separate, the States constructed from them, to which should be given the name *international boundaries*.

From this point on we shall adhere to our division of the Special Part into Two SECTIONS.

For the purpose of determining what were the territories and dividing lines of the distinct parts of the Spanish dominions, we shall study, in the FIRST SECTION, all the questions of law, geography and history relating to the colonial epoch, without entering for a moment into an estimate of their value in this effort to reach a decision of the great question in litigation, although it will soon be seen that they will be of the utmost value from the moment the principle of colonial *uti possidetis* appears to be accepted in whole or in part. In this section we shall consider with the greatest care all the points relating to the Royal Decree of 1802, including those advanced and discussed subsequently to the colonial period, such as the points as to its validity, territorial contents and efficacy, but without departing from this epoch or concerning ourselves with the weight of that Royal Decree in the law of modern times.

And we shall take up for consideration in the SECOND SECTION all legal, geographical and historical questions relating to the present epoch, or, rather, to the epoch of free and independent States, the territories and frontiers of which can only be determined in accordance with international law as applied to the traditions of the colonial régime and to the principle of the sovereign right of

emancipated peoples to constitute and organize themselves into bodies politic. The history of the *treaties* of Peru with Colombia and Ecuador, the texts of those treaties, the general *doctrine* of international and special law of the Spanish-American States, and that set up by both parties in the present *arbitration* are the authorities to which we must refer in order to establish the *international* boundaries, deciding then whether they should be intercolonial boundaries, as at present constituted, or otherwise.

SECTION FIRST

INTERCOLONIAL BOUNDARIES.

CHAPTER I.

Viceroyalties of Peru and New Granada.

SUMMARY:

- I. The question of boundaries considered with respect to the Colonial régime; historic periods.
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- III. Second period: from 1717 to 1802.—1. Creation (1717), extinguishment (1723) and re-establishment (1739) of the Viceroyalty of Santa Fe, or New Granada.—2. The Bishoprics: (a) creation of the Bishopric of Cuenca (1779) by segregation from that of Quito, (b) territories and boundaries of the Bishopric of Trujillo in 1786.—3. The Intendency of Trujillo; the map of 1792.—4. Descriptive memorials and general maps.
- IV. Third period: from 1802 down to the independence; reincorporation of the territories of Maynas and the Government of Guayaquil in the Viceroyalty of Peru.

§I. The Boundary Question Considered with Respect to the Colonial Régime; Historic Periods.

If it has always been advantageous to know which were the territories and divisionary lines of the ancient colonial circumscriptions in order to determine questions of boundary between states constructed by peoples that lived within them, their study becomes absolutely indispensable from the moment when, in one way or another, as in the present case, the principle of *uti possidetis* is accepted.

For this reason, to avoid the intrusion of questions of one epoch among those of another, to consider them with the criteria and data of their respective periods, let us study the case as if the States of Peru and Ecuador being non-existent, a controversy had been provoked between Spanish authorities during the colonial régime and it had become necessary to settle it in accordance with the enactments of Spain.

We shall begin by determining the territories and general boundaries of the Viceroyalties, distinguishing the three following periods: the first, from 1542, the year in which the Viceroyalty of Peru was created, to 1717; the second, from 1717, when the Viceroyalty of New Granada was created, down to 1802, and the third, from 1802, in which year, by virtue of various royal decrees, the *Gobiernos* of Maynas, Quijos and Guayaquil were re-incorporated into the Viceroyalty of Peru, down to the moment of Independence. The first may be called the period of only one Viceroyalty, the second the period of two Viceroyalties and the third the period of re-incorporation, or of the royal decrees.

The territories and general boundaries of the Viceroyalties being known, we shall pass to a study of those corresponding to the special circumscriptions to which this case relates: the Comandancia general of Maynas (Amazonas region) and the provinces or Gobernaciones of Jaén, Guayaquil, Piura and Tumbes.

§II. First Period: From 1542 to 1717.

1) **The Entire Epoch of the Viceroyalty of Peru.**—The first period, from 1542 to 1717, is that of a single South American Viceroyalty. The paramount authority and the personal representation of the King in Spanish America resided exclusively in the two Viceroy—of Mexico (New Spain) and Peru (New Castile), who were instituted by the Emperor Charles V in 1542 in accordance with Law 1, Title 3, Book III, of the *Compilation of the Laws of the Indies*, published in 1680.

In that same Code, particularly in Law 1, Title 2, Book V, are embraced, under the denomination *Peru*, the districts of the Audiencias of Panamá, Lima, Santa Fe (New Granada), Charcas (Upper Peru), San Francisco de Quito, Chile and Buenos Aires. That is to say, the whole of South America, except the foreign colonies and the Comandancia general of Caracas, a dependency of the Comandancia of Santo Domingo.

So, then, all the territories now in dispute belonged in this first period to Peru. If the controversy over the boundaries had been stirred up at that time, it would have been between audiencias, bishoprics or governments of the Peruvian Viceroyalty. Let us see, therefore, how it was internally divided, in its effect upon the question before us.

2) **Districts and Governments of the Audiencias.**—The Audiencias of Lima and Santa Fe were instituted by the Emperor Charles V in 1542 and 1549, respectively. Between these, Philip II established, in 1563, the Audiencia of San Francisco de Quito. The *Compilation of the Laws of the Indies* specifies the territories and confines of the three audiencias in 1680 in Book II, Title 15.

a) *Audiencia of Lima.*—As to the audiencia located at the City of the Kings (Lima), the capital of the provinces of Peru, Law 5, says: "It may have for its district the coast from that city down to the Kingdom of Chile exclusive, and up to the Port of Paíta inclusive, and, for inland, to San Miguel de Piura, Cajamarca, Chachapoyas, Moyabamba and the Motilones, inclusive, and as far as Collao, exclusive, along the boundaries outlining the royal Audiencia of La Plata, and the city of Cuzco, with its boundaries, inclusive, sharing the boundaries on the north with the Royal Audiencia of Quito, on the south with the Audiencia of La Plata, on the west with the Southern sea, and on the east with the provinces yet undiscovered, accordingly as they may be established. * * *"

Law 1, Title 2, Book V, mentions, as embraced within the district of that Audiencia, the Corregimientos of Cuzco, Cajamarca la Grande, Santiago de Miraflores de Zaña and the town of Chiclayo, San Marcos de Arica, Collaguas, Andes del Cuzco, Villa de Ica, Arequipa, Guamanga, city of San Miguel de Piura and port of Paíta (a single corregimiento), and Castro-Virreina.

b) *Audiencia of Quito.*—At the city of San Francisco de Quito (says Law 10, Title 15, Book II) is located another of our audiencias. The law provides that "it may have for its district the Province of Quito, and along the coast towards the City of the Kings to the port of Paíta, exclusive, and, for inland, as far as Piura, Cajamarca, Chachapoyas, Moyabamba and Motilones, exclusive, including in that direction the towns of Jaén, Valladolid, Loja, Zamora, Cuenca, La Zarza and Guayaquil, with all other towns that shall be within these limits or which may be founded therein, and, in the direction of the towns of Canela and Quijos, it may have said towns with all others that shall be found therein; and along the

coast towards Panamá, as far as the port of Buenaventura, inclusive; and for inland to Pasto, Popayán, Cali, Buga, Chapanchica and Guarchicona, because the other towns in the Gobernacion of Popayán belong to the Audiencia of the New Kingdom of Granada, with which, and with the Audiencia of Terra Firme, it may share the boundaries on the north, and with the Audiencia of the Kings (Lima) on the south, having for its boundary on the west the Southern sea, and, on the east, provinces not yet pacified or discovered."

Embraced in the district of that audiencia, according to Law 1, Title 2, Book V, above cited, were the Gobierno of Popayán, with a governor and a law deputy (*teniente letrado*) "part of which Gobierno is contiguous to the Audiencia of Santa Fe; the Gobiernos of the Quijos, of Jaén de Bracamoros and of Cuenca; the Corregimiento of Quito, that of the City of Loja, that of Zamora and the mines of Zaruma, and that of Guayaquil."

c) *Audiencia of Santa Fe*.—At *Santa Fe* de Bogotá, in the New Kingdom of Granada, says Law 7, Title 15, Book II, is located another of our audiencias. This law provides that "it may have for its district the provinces of the new Kingdom (of Granada) and those of Santa Marta, Rio de San Juan and Popayán, except the towns which from that province are designated as belonging to the royal Audiencia of Quito, and, from the Guayana, or Dorado, it may have all that did not belong to the Audiencia de la Española, and all of the Province of Cartagena, sharing boundaries: on the south with the Audiencia of Quito and lands undiscovered, on the west and north with the Northern sea and provinces which may belong to the Royal Audiencia de la Española, and on the west" (*sic*) "with the Audiencia of Tierra Firme."

The aforesaid Law 1, Title 2, Book V, mentions, as in the district of this audiencia, the captaincy governments of the provinces of Cartagena, Santa Marta, Mérida and Lagrita, of Trinidad and Guayana, the Gobierno of Antioquia, the Corregimiento of Tocaima and Vague (Mariquita), and that of Tunja.

d) *Résumé*.—It results from these territorial descriptions taken from the *Compilation of the Laws of the Indies*, published in 1680:

1st. That the district of the Audiencia of *Lima* bordered on the north on the district of the Audiencia of Quito, its divisionary line being the northern line of the Corregimiento of Piura and Paita and of the provinces of Cajamarca, Chachapoyas, Moyobamba and the Motilonos, until the line loses itself in the east in lands unknown.

2nd. That the district of the Audiencia of *Quito* bordered on the south on the district of the Audiencia of Lima, as far as the said Corregimiento of Piura and Paita, exclusive, and the provinces referred to; on the west, on the Pacific, as far as the Port of Buena-ventura inclusive; on the east, on the provinces still unpacified and undiscovered, and, on the north, on the Audiencia of Tierra Firme and Santa Fe, or New Granada.

3rd. That, within the Audiencia of *Quito*, remain, among other territories, those of Guayaquil, Jaén, Loja, Cuenca, Quijos and Canela.

4th. That the district of the Audiencia of *Santa Fe*, of the new Kingdom of Granada, bordered on the south on the district of the Audiencia of *Quito* and lands undiscovered.

5th. That between the territories of the Audiencias of *Quito* and *Santa Fe* lay the great province of *Popayán*; that to the first belonged the towns of Popayán, Pasto, Cali, Buga, Chapanchica and Guarchicona and "the other towns of this Gobernación" to the second. The office of Governor of Popayán was conferred by the King, as in the district of the Audiencia of *Quito*.

3) The Bishoprics.

a) *Bishoprics of Lima and Quito*.—The Bishopric of the Kings, of Lima, founded in 1541, was erected into an *Archbishopric*, under the character or title of Metropolitanate of Peru, in 1547, having for suffragans the Bishoprics of Cuzco, *Quito*, Tierra Firme, Nicaragua, Popayán and others that were created (D. M. P., No. 61).

In 1543, by command of the King, the lawyer (*licenciado*) Vaca de Castro, of His Majesty's Council, and Governor of Peru, traced the demarcation of the Bishoprics of Cuzco, Lima and *Quito*, minutely determining their territories and limits. From his report it is inferred that at the north the Diocese of *Lima* embraced the city of Trujillo in the direction of San Miguel, the city of Frontera in the Chachapoyas and the city of Santiago de Moyobamba, with all their limits and jurisdictions; and the diocese of *Quito*, from the city of San Miguel and the entrance of the Bracamoros to the village of Pasto, inclusive, which shared boundaries with the city of Popayán (D. M. P., No. 63).

b) *Bishopric of Trujillo*.—In 1577 His Holiness authorized the creation of the Bishopric of Trujillo, and, in the royal decree of 1611, it was ordered that this be divided with that of *Quito*, that of Trujillo being constructed upon a portion taken from the Arch-

bishopric of Lima, and, in view of its small resources, absorbing another portion from the Bishopric of Quito, which ceded to that of Trujillo the town of Frías, the city of San Miguel de Piura, the city of Paita, the towns of Colán, Tumbes, Catacaos, Sechura, Copis, Motupe, Jayanca, Pacora and the city of Jaén (D. M. P., No. 64).

c) *Missions*.—It should be noted also, with respect to the ecclesiastical division at this period, that in 1687 the work of converting the Indies was divided between the missions of the religious bodies of San Francisco of Lima and those of the order of Jesuits of Quito. The missions of the Franciscans having entered this territory, the town of Andamarca, province of Jauja, and followed along the Gran Paro, or Marañón river, as far as the towns of the Conibos, the Jesuit missions extended from the Gran Cocama. (La Laguna) as far as the said Conibos; and, owing to a dispute over that limit, it was decided that the Society of Jesus should have as far as the town of Conibos inclusive, on the upper river, and from Conibos on the lower river, towards the north, all the Indian nations which might be found therein; and the Franciscan Fathers, from the town at which they made their entry on the lower river as far as Conibos (Documents attached to the Brief for Peru—*Documentos del Alegato del Perú*—No. 29).

§III. Second Period: From 1717 to 1802.

1) **Creation (1717), Extinguishment (1723) and Re-establishment (1739) of the Viceroyalty of Santa Fe, or New Granada.**—This Viceroyalty was created by order of the King of April 29th and the royal decree of May 27th, 1717, reconstructing, in the Audiencia of the new Kingdom of Granada, the Audiencias of Quito and Panamá, which were thereupon *abolished*, adding to it the Comandancia of Caracas, which had been a dependency of the Audiencia of Santo Domingo, and placing at the head of the new circumscription a viceroy who should reside in the city of Santa Fe and who should be Governor, Captain-General and President of the Audiencia “in like manner and with the same powers” as the Viceroys of Peru and New Spain (Mexico).

That Viceroyalty, not having produced the results hoped for, chiefly from the abolishment of the audiencias (Quito being distant more than 500 leagues from Santa Fe) and also from excess in outlay and administrative disorders, was extinguished in 1723, leaving matters as they were before its creation.

But, in view of the remonstrance of various communities in the district of New Granada, based upon the decadence of those towns and of the resolutions of the Supreme Council of the Indies of June 26, 1738, the King ordered, by royal decree of August 20, 1739, the re-establishment of the Viceroyalty in conformity with the report of that body.

In that decree the King states :

"I have resolved to establish anew the Viceroyalty of the new Kingdom of Granada and have appointed, as its head Lieutenant-General, D. Sebastián de Eslava, * * * being at once President of my royal Audiencia of the City of Santa Fe, in the said new Kingdom of Granada, Governor and Captain-General of the jurisdiction of that Viceroyalty and *the provinces that have been added to it*, which are: the Island of Trinidad and Guayana; the province of Cartagena, with the territory of its Captaincy-General; in the province of Panamá, Portovelo, Veragua and the Darién; the provinces of the Choco, *Kingdom of Quito, Popayán and Guayaquil*, Santa Marta, Rio del Hacha, Maracaibo, Caracas, Cumaná, Antioquia and Rio Orinoco; Island of Margarita, with all the cities, villages and towns belonging to them; * * * the *Audiencias* of Panamá and Quito to remain and subsist as they are in the same *subordination* to and dependency upon this Viceroy as that maintained by the provinces subordinate to the Viceroyalties of Peru and Mexico with regard to their respective Viceroys."

The Viceroyalty of New Granada, then, stood constructed upon the basis of this Kingdom by the aggregation of provinces belonging to the Audiencias of Quito and Panamá, which were preserved, and by other provinces mentioned, all subjected to the Viceroy of Santa Fe in the same manner as they had been to the Viceroys of Peru and Mexico. Within the new Viceroyalty, and dependent upon its Viceroy, the same royal decree established three Comandancias generales: those of Panamá, Cartagena and Caracas (D. M. P., No. 66).

2) The Bishoprics.

a) *Creation of the Bishopric of Cuenca (1779) by segregation from that of Quito.*—At the request of the Bishop of Quito that a new bishopric be formed because of the overburdening extent of his own diocese, and after receiving the Pontifical approval, the Bishop of Popayán was empowered to trace its demarcation, acting in association with commissioners of the various authorities interested, and the royal decree of June 13, 1779, was enacted to that end. That de-

cree instituted the *Bishopric of Cuenca*, as suffragan to the Archbishopric of Lima, embracing the three provinces of Cuenca, Loja and Guayaquil and the towns and parishes of the Lieutenantcy of Alausí (D. M. P., No. 65).

There remained to the *Bishopric of Quito* all the territory that may be seen in the "Description of the cities, towns and villages of the Bishopric of Quito," published July 14, 1755, excepting those three provinces and the lieutenantcy (D. M. P., No. 67).

b) Territories and boundaries of the Bishopric of Trujillo in 1786.—The Bishopric of Trujillo in the Viceroyalty of Peru is fully described in the *topographical map* made and dedicated to Charles III by Bishop Fr. Baltasar Jaime on October 1, 1786, after a four-year survey of his entire diocese along the paths which mark out his journeys on this map, and which he says was traced, not only from his own observations, but from all the data he had prepared for a work on the history of that Bishopric, declaring that he had made his map "with all exactness and precision."

The Bishop states, in the legend on his map, that his diocese extends from north to south 475 leagues from *Tumbes* to the *Santa* river, and from west to east 214, from Cape Blanco, in the province of Piura, to the town of Cumbasa, in the province of the Motilones de Lama.

According to this map, the Bishopric of Trujillo has, for frontier provinces on the north, that of Piura, which begins beyond Tumbes and borders on the province of Loja of the Bishopric of Cuenca; the province of Jaén, which borders on that of Cuenca in the same Bishopric, and that of Chachapoyas, which borders the Missions and province of Maynas in the Bishopric of Quito.

On the west, the frontier provinces of Saña (now Lambayeque) and Trujillo along the Pacific coast below the province of Piura.

In the center, the province of Cajamarca, below that of Jaén, and bordering on the East on the province of Chachapoyas.

On the south, in addition to the province of Trujillo, those of Guamachuco and Pataz, bordering on the Archbishopric of Lima.

And, on the east, alongside of the province of Pataz, and below that of Chachapoyas, stretch the converted territories (converted to Christianity) of Guaylillas, Serra de Montañas and Pampa del Sacramento.

3) The Intendency of Trujillo; the Map of 1792.—On the establishment of the system of intendency governments by the In-

tendents Ordinance of August 5, 1783, there was created in the Viceroyalty of Peru the Intendency of Trujillo, converting the ancient provinces or corregimientos into districts and placing at the head of each an associate judge, to preside in the four so-called "matters of justice, police, finance and war" (D. M. P., No. 155).

There is a "*Map of the Intendency of Trujillo, Made Under the Orders of the Most Excellent Señor Viceroy, D. Francisco Gil y Lemos, by D. Andrés Baleato in the year 1792,*" in which are embraced the aforementioned provinces of the Bishopric of Trujillo: Piura, Cajamarca, Chachapoyas, Saña, Trujillo, Guamachuco and Pataz, and alongside this the converted territories of Guayllillas, Guanuco and Pampa del Sacramento. The Intendency borders on the north on the provinces belonging to the Viceroyalty of Santa Fe and on the south on the Intendency of Tarma, of the Viceroyalty of Peru.

And, if we compare this Map of the Intendency of Trujillo of 1792 with the topographical map of the Bishopric of Trujillo of 1786, we shall see that they coincide with regard to the provinces, except that the province of Jaén is not included in the intendency because of its belonging to the Viceroyalty of Santa Fe; and they coincide also as to the boundary of both entities, from which it may be deduced that the Intendency of Trujillo was coextensive with the Bishopric, with the exception indicated and a certain other concrete exception of a different category.

4) **Descriptive Memorials and General Maps.**—In addition to the "*Description of the Cities, Towns and Villages of the Bishopric of Quito*" (1775), most interesting as it is, not only as to matters ecclesiastical but as to political affairs as well, we have to cite other descriptive memorials written at this period, which will serve to illuminate the question.

There is the "*Relation of the Status and the Political and Military Government of the Provinces, Cities, Towns and Villages in the Jurisdiction of the Audiencia of Quito,*" written by the Marqués de Selvaalegre, President of that Audiencia, Governor and Captain General of its provinces, for the most excellent Señor D. José Solís Folch de Cardona, Viceroy-Governor and Captain-General of the new Kingdom of Granada, by order of the latter, on September 13, 1754. Most minutely descriptive, the work proceeds to designate, town by town, those which comprise the different circumscriptions of Quito (the capital), Latacunga, Riobamba, Macas and Quijos,

Chimbo, Guayaquil, Cuenca, Loja, Jaén de Barcamoros, Maynas, San Miguel de Ibarra, Otabalo and Esmeraldas (D. B. P., No. 28).

The *Description of the Kingdom of Santa Fe de Bogotá*, written by "one who is inquisitive and jealous of the State's welfare, one who has managed the affairs of the Kingdom for many years," and signed by D. Francisco Silvestre at Santa Fe, December 9, 1789. This authority states, in the third chapter, that the Audiencia of Quito consists of nine gobiernos and seven corregimientos, and, in the succeeding chapters describes them, there appearing in the document before us the seven Gobiernos of Quito, Popayán, Guayaquil, Jaén de Bracamoros, Maynas, Yaguarsongo and Quijos, Canelos and Macas (D. M. P., 68).

Among the documents presented by Peru are also other descriptions which refer particularly to certain determinate territories. These we shall take up at an opportune time.

In the same manner must we treat the special maps, citing now only those which refer to the general question: D. Pedro Maldonado's map of the province of Quito and contiguous territory, published at the order and expense of His Majesty in 1750; the Jesuits' map of the "Quitensis" Province (1751); Map of the northern part of the Audiencia of Lima, from the Atlas of Tomás López, Paris, 1758; Map of the Audiencia of Quito by D. Francisco Requena, 1779, and the two already discussed of the Bishopric and Intendency of Trujillo, of 1786 and 1792.

Those maps and descriptive relations help us to ascertain the different territories, to know which towns comprised the several jurisdictions and to determine their limits from the terminal towns in cases in which the boundaries are not set forth.

§IV. Third Period: From 1802 Down to the Independence; Reincorporation of the Territories of Maynas and Government of Guayaquil in the Viceroyalty of Peru.

During this period, various of her territories which had passed to the Viceroyalty of Santa Fe, or New Granada, on its establishment, were restored to the Viceroyalty of Peru.

By Royal Decree of July 15, 1802, the Gobierno and Comandancia general of Maynas was formed out of the territories of the

Amazonas region, taken from the Viceroyalty of Santa Fe and added to that of Peru at the time of the creation, with coextensive territory of the Bishopric of that name.

By another royal decree (July 7, 1803), it was ordered that the Gobierno of Guayaquil be segregated from the Viceroyalty of Santa Fe and added to that of Lima, and, in 1806, it was declared that that aggregation had been consummated.

Those royal decrees were made known and obeyed, confirmed by other dispositions, and they continued to be respected and complied with until the moment of independence.

In compliance with the royal order of May 6, 1813, the Viceroy of Peru, by agreement with the Audiencia and Provincial Deputation resident at Lima, made the division of their jurisdiction into judicial circuits and districts, which was communicated to the Minister then in office on July 31, 1814. Figuring in this division were the seven provinces of Lima, Tarma, Arequipa, Guamanga, Huancauélica, Trujillo and Guayaquil and the two Gobiernos of Chiloe and Maynas, those "nine provinces" comprising fifty provincial judicial districts and fifty-six judicial circuits of first instance (Memorial of Peru—*Memoria del Perú*—Title III, p. 226).

We shall say no more at this point about that period, nor make a résumé of what has been set forth in regard to the provinces to which the present controversy relates, because we propose to take up for discussion, as to each, the particular phases and legal situation down to the Independence.

CHAPTER II.

The Gobierno and Comandancia general of Maynas.

(The Drafting and Tenor of the Royal Decree of 1802.)

SUMMARY:

- I. Drafting of the Royal Decree of July 15, 1802.—1. Reports of the Presidency of Quito.—2. Proceedings of the Supreme Council of the Indies.
- II. Tenor of the Royal Decree.—1. Formation of the Gobierno and Comandancia-general of Maynas.—2. Unity of the Missions.—3. Creation of the Bishopric of Maynas.
- III. General character of that sovereign act.

§I. Drafting of the Royal Decree of July 15, 1802.

The immense territorial expanse lying between the Andes and Brazil and watered by the Marañón, or Amazonas, and its northern and southern affluents—which, for this reason, we may term the *Amazonas region*, and with which corresponds what Ecuador calls “her Eastern region,” and Peru, “her Departments of the Amazonas and Loreto,”—is the territory referred to in the Royal Decree of Charles IV, dated July 15, 1802, on the establishment of the Gobierno and Comandancia general of Maynas and the Bishopric of that name; and, the legal situation created by that Royal Decree being that in which the Amazonas region found itself at the moment of independence, hence the necessity of examining carefully that sovereign disposition, commencing by showing upon what studies and reports it was based.

1) **Reports of the Presidency of Quito.**—With the creation of the Viceroyalty of Santa Fe, the Amazonas government found itself actually isolated and without sufficient forces to resist the invasions of Portuguese colonists, because of the obstacles to communication over such great distances and across the Andes, whereas, for Peru, communication was easier, as it was by means of navigation of the Marañón and its affluents.

This abundantly appears from the "*Description of the Routes*" (in the expedition from Quito to dislodge the Portuguese), written by the Governor of Maynas and Engineer in Chief of the Boundary Commission, D. Francisco Requena, on September 15, 1777, by order of the President of that audiencia, D. José Diguja, and transmitted by the latter to the Minister, D. José Gálvez, by way of accounting for the difficulties met with in complying with the orders of the King to repel the invaders, and as supporting his hopes of succeeding therein by following the newly projected route passing through Peru (D. M. P., No. 87).

The same Minister (D. José Gálvez), by virtue of the royal order of February 15, 1779, directed the President of Quito to inform himself as to the erection, at Borja, capital of the province of Maynas, of a bishopric which should comprise the missions on the upper and lower Marañón; and the President at that time, D. José García de León y Pizarro, called upon D. Francisco Requena for the special information and data respecting those territories accumulated by the latter in his capacity of Commissioner charged by the King to rectify the boundary demarcation about the Marañón with the possessions of the Crown of Portugal.

In his report, D. Francisco Requena submits the "*Description of the Country* which should comprise the New Bishopric of Missions Projected for Maynas," signed at Quito, October 31, 1779, and accompanied by a map drawn "from the best observations and notes obtainable." It was proposed to unite in that Bishopric all the missions of Maynas, of Sucumbios, Lamas, Canelos, the parishes of the Gobierno of Quijos and the parish of Santiago de las Montañas, fixing its capital at Omaguas. As it proceeds to give the location and dependency of each town and the reasons it had for uniting under one jurisdiction, that description is of the utmost importance to a knowledge of that country (D. M. P., No. 90).

In the midst of a further survey of the towns and villages embraced in his employment, Requena received orders from the President of Quito to revise his report, if, in the light of his more recent observations, he should find anything to rectify or add to it. He made such a revision, amplifying his report with new data and proposing, for the capital, the town of Laguna, in his "*Consectary* to the Earlier Description," dated at Tabatinga, March 12, 1781 (D. M. P., No. 90).

On the 18th of November of the same year the *President of*

Quito transmitted to Madrid those works of Requena, *accepting them as his own* for the purposes of the report he had been directed to submit.

Demands on the Presidency of Quito for reports continued to come in from the court at Madrid, not only as to the project for the Bishopric, but also concerning the temporal government of that country, to aid in strengthening its hands and preventing smuggling.

On the 18th of May, 1791, during an interim in the government, the *Audiencia of Quito* reported, transmitting the description written February 20, 1785, by D. Francisco Requena in compliance with a royal order of 1784, accompanying it by a report from D. José Checa, Governor of Quijos, and another by D. Joaquín Fernández Bustos, an officer of the division of boundaries of the Marañón, and offered to forward the reports which had been asked for from the director of the tax on monopolies (*Director de rentas estancadas*) and the royal officials of Quito, concerning the project of D. Francisco Requena, and also the opinion rendered by Señor Requena on February 19, 1789, as to another project formulated by D. Francisco Calderón, a resident of that city.

On July 26, 1794, the audiencia was reminded of its offer to transmit the above-mentioned documents, and the *Viceroy of Santa Fe* was directed to inform himself on the subject. The Viceroy replied, on the 19th of April, 1795, saying that, because of lack of material, he was not in a position to familiarize himself with the questions involved and suggesting that "no one can do this better than Señor Requena." On the 21st of June of the same year the *audiencia* transmitted the documents offered, claiming for the reports of Sr. Requena that, in its opinion, they were "the most fundamental and judicious" (D. B. P., Nos. 33, 34 and 35).

2) **Proceedings of the Supreme Council of the Indies.**—The Supreme Council of the Indies being now in charge of the case, agreed, at the request of the Attorney-General (*Fiscal*) of Peru, that the matter should be taken in hand by Señor Don Francisco Requena, who, after seventeen years of service as Governor of Maynas and Royal Commissioner of Boundaries, had risen to be Field Marshal and one of the ministers of that exalted body.

Don Francisco Requena, as such *Minister*, made a report (*informe*) on the 1st of April, 1799, reiterating his opinion of March 29th, preceding, with regard to the Missions of the Ucayali river.

This opinion (*dictamen*) covers three principal points which he has developed with the greatest thoroughness (D. B. P., No. 31).

In the first point he considers what should be done with the *Gobierno of Maynas* and states that that Gobierno is composed solely of mission towns, lying far apart; that it is separated in every direction from the more settled and cultivated provinces and costs much to sustain; that it was established by conquest and was progressing under the care and help of the Viceroys of Peru until the creation of the Viceroyalty of Santa Fe, whereupon the Missions began to fall into decay, "because, either by reason of scant reflection, or, perhaps, but little knowledge of the conditions, the limits had been fixed between the two Viceroyalties;" that the first conquerors made their entries by starting from Lima and some advantage was obtained by using the route from Peru, the enterprises undertaken by way of the rough mountainous passes to the east of Quito having invariably failed; that in forgetfulness or abandonment of the royal jurisdiction, the Gobierno was committed to the charge of the Jesuit Fathers; that the province of Maynas was deteriorating as a result of the encroachments of the Portuguese along the Marañón river, to which no opposition whatever had been made, and that, when the attempt was made from Quito, in 1776, to check this crowding in, it was of no avail and entailed enormous expenditures. For which reasons, "the most effective and necessary measure to be taken concerning the Gobierno of Maynas and Comandancia general of those missions is to make it a dependency of the Viceroyalty of Peru," extending the Gobierno and Comandancia general, not only along the Marañón river to the Portuguese frontiers, but also along those rivers which flow into the Marañón itself at its northern banks, up as far as the points at which they cease to be navigable, since that vast stretch of country is only accessible and passable by means of the navigation of its rivers.

In his second point he devotes himself to the religious orders to which ought to have been committed the work of the *missions*, declaring that their decadence began on their separation from the Government of Peru, and reached its lowest extreme with the expulsion of the Jesuits in 1776, when the missions were placed in charge of priests ignorant and wholly unfit and of religious bodies of different extraction acting under no common system and possessed of no adequate means. He proposes, therefore, that those missions be given into the care of the apostolic missionaries of the

College of Ocopa, who already had the Mission of Huallaga and Ucayali and had demonstrated their competence. And thus all the missions, with the Gobierno of Maynas, being thus subordinated to the Viceroy of Lima, "could better combine the propagation of the Evangels with the ceremonies and security of the State."

The third point is that relating to the creation of the *Bishopric of Maynas* and is based upon the necessity of securing a degree of unity to the spiritual government of that region and upon the difficulties encountered by the different bishoprics on which many towns depend for guidance, as shown by the fact that they had never been visited by their respective bishops.

To summarize, said D. Francisco Requena, "the creation of the Bishopric, good missionaries and the subordination of the Governor of Maynas to the Viceroy of Lima are the three principal needs of the moment, and which, as a fundamental basis, will facilitate all the others that in the future must be provided for the civilization of those people, the security of the frontiers, for the commerce of the missions with the provinces of Peru and some future profits for the Royal Exchequer."

The *Fiscales* of the Supreme Council of the Indies, as well the Fiscal of Peru as that of New Spain, favored this opinion (D. B. P., Nos. 32 and 33); and the *Council*, in its turn, on the 28th of March, 1801, recommended the approval thereof because of the sound foundations on which it rested, because of the circumstances of actual eye-witnessing which gave them strength, and the necessity for providing a remedy for such numerous evils, adding that, if His Majesty would agree, it would devise the means for the realization of "a project so attractive to religion and the State." The *King* agreed with the Council, using the formula, "as it appears, with an eye also to the interests of the *Accountant-General's office*" (D. B. P., No. 34).

The matter passed into the jurisdiction of the *Auditor-General* and the *Fiscal*, and, in complete accord therewith, the *Council of the Indies*, on December 16, 1801, proposed the means for carrying into effect what had been ordered, suggesting, first, that decrees be directed to the Viceroy of Lima, the Viceroy of Santa Fe and to the President of Quito providing that "they shall consider as separated from this province and as reunited to the Viceroyalty of Peru, the *Gobierno of Maynas*, whose *boundaries* should extend, not only along the lower Marañón as far as the frontiers of the Por-

tuguese colonies, but also along those rivers emptying into the Marañón on its northern bank, as far up as the points at which they cease to be navigable, * * * that is, the *temporal* and *spiritual* government of those missions shall embrace all of that low and vast stretch of country passable by means of the navigation of its rivers * * * The King thereupon decreed: "*como parece*" (as it appears) (D. B. P., No. 35).

In conformity with all that had been proposed and agreed to, the *Royal Decree* of July 15, 1802, was promulgated and communicated to all civil and ecclesiastical authorities interested (D. B. P., No. 37; and D. M. P., No. 91).

§II. Tenor of the Royal Decree.

The Royal Decree of July 15, 1802, begins with a résumé of the proceeding as it relates to the *temporal government* of the Maynas missions and determines the three points set forth in Requena's opinion, as we are now about to observe in the copy of the decree directed to the Viceroy of Peru (D. M. P., No. 91).

1) Formation of the Gobierno and Comandancia general of Maynas.—"I have resolved," says the King, "that there shall be *segregated* from the Viceroyalty of Santa Fe and from the province of Quito and *aggregated* to that Viceroyalty (that of Peru) the Gobierno and Comandancia general of Maynas, with the towns of the Gobierno of Quijos, except the town of Papallacta, because all these are located on the borders of the Napo river, or in its immediate environs. This Comandancia general shall extend, not only along the lower Marañón river as far as the frontiers of the Portuguese colonies, but also along all the other rivers emptying into the Marañón on its northern and southern banks, such as the Morona, Guallaga, Pastaza, Ucayale, Napo, Yavarí, Putumayo, Yapurá and other less considerable rivers, as far up in each as the point at which, because of its cataracts and inaccessible rapids, it ceases to be navigable. There shall also remain to the said Comandancia general the towns of Lamas and Moyobamba, in order that, as far as possible, it may be coextensive with the ecclesiastical and military jurisdiction over those territories."

And he adds: "To which end I command ye that the Gobiernos of Maynas and Quijos being, as they now are, attached to that Viceroyalty (Peru), ye assist them with such measures as ye may deem

necessary and called for by the Comandante general, tending not only to the advancement and maintenance of the towns and safeguarding of the missionaries, but also to the security of that domain, preventing their invasion by vassals of the Crown of Portugal, and appointing such subordinate military officers and deputies to the Governor as may appear to ye necessary for the defence of those frontiers and the administration of justice."

2) **Unity of the Missions.**—The Royal Decree then provides that the missions and curacies of all the towns "comprising the jurisdiction prescribed for the aforementioned Comandancia general and the new Bishopric of Missions," shall be placed in the care of the Apostolic College (of the *Propaganda of the Faith*) of Santa Rosa de Ocopa of the Archbishopric of Lima, ordering the establishment of hospices for the missionaries of that college at Chachapoyas and Tarma to be supplied by the Convent of Guanuco and the curacies of Lamas and Moyobamba.

3) **Creation of the Bishopric of Maynas.**—"I have likewise resolved," continues the Royal Decree, "to erect a Bishopric among said missions, suffragan to that Archbishopric, to which end there will be obtained from His Holiness the requisite apostolic brief, the new Bishopric to be composed of: all the converted territories now served by the missionaries of Ocopa along the Guallaga and Ucayale rivers and the mountain passes through which they are entered and which are embraced within the Archbishopric of Lima; the parishes of Lamas, Moyobamba and Santiago de las Montañas, belonging to the Bishopric of Trujillo; all the missions of Maynas; the parishes of the province of Quijos, except that of Papallacta; the curacy of Canelos, on the Bobonaza river, served by the Dominican fathers; the missions of the religious Order of Mercy, in the lower region of the Putumayo river, belonging to the Bishopric of Quito, and the missions known as the Sucumbios, situated in the upper regions of the same river and along the Yapurá river, which were in charge of the Franciscan Fathers of Popayán."

And the Royal Decree concludes by fixing the residence of the new Bishop at the town of Jeberos, establishing his endowment and providing for the deposit in the royal treasury of the Viceroyalty of Peru of the tithes gathered throughout the whole district of the Bishopric.

The request having been transmitted to Rome, a pontifical decree was returned approving the erection of the new Bishopric of

Maynas in conformity with the wishes expressed. D. Juan Antonio Montilla was first named as Bishop, but, he having declined, Fr. Hipólito Sánchez Rangel was appointed to the new diocese in May, 1804 (D. B. P., No. 39).

§III. General Character of that Sovereign Act.

As may be seen, the Royal Decree of July 15, 1802, was the project of Don Francisco Requena on which he had been working since 1777, and which concluded with his opinion of 1779 proposing the administrative unification of the Amazonas region, that is to say, the region formed by the Marañón and its affluents on the north and south, with a government for temporal and spiritual matters within the Viceroyalty of Peru, thus rectifying the error committed on the creation of the Viceroyalty of New Granada and providing an organization more advantageous to the interests of both temporal and spiritual régimes.

It has been objected that that unification was of a military and ecclesiastical character only, and that, in treating of the Comandancia general, the Royal Decree mentions towns and not territories. But these objections do not take into consideration the fact that the decree says "*Gobierno*" (government) "and Comandancia"; that, although the *military epithet* predominates in use, the same occurs in the cases of the governments of the so-called Captaincies-General of Guatemala, Venezuela and Chile, and no one doubts that they were civil governments as well as military commands; that the mention made of the *towns* (*pueblos*) included the idea of their respective jurisdictions, and that the territories were expressly indicated by their *rivers*, which is the most effective way of designating them in unpopulated regions.

In the *preamble* of the Royal Decree, which we have omitted, is discussed the spiritual and *temporal* advancement of the *missions*, the generic name given to those Indian territories already, or to be, converted; and it is clearly stated that the subject under consideration is that "the *Gobierno and Comandancia general* of Maynas shall be dependent upon the Viceroyalty of Peru, segregating from that of Santa Fe *all the territory* which comprised them (the missions of Maynas), as likewise *other lands* and missions contiguous to those belonging to Maynas along the 'Napo, Putumayo and Yapurá rivers."

It speaks, moreover, of the union of the two ancient *Gobiernos* of Quijos and Maynas under the new government of the last named; of commercial interests, and of needs, not only for defence, but for advancement of, and for the administration of justice in, the towns; and the idea of temporal government is contradistinguished from that of spiritual within a territory common at once to the missions, the Comandancia and the Bishopric.

The detailed discussion of the evidence we shall adduce to establish the force and effectiveness of the Royal Decree of 1802 will confirm our contentions that the Gobierno and Comandancia general of Maynas embraced every sphere of temporal government.

CHAPTER III.

The Gobierno and Comandancia general of Maynas.

(Territories Embraced)

SUMMARY:

- I. The territories of the Gobierno and Comandancia general of Maynas were identical with those of the Bishopric, although designated in a different manner.
- II. Gobierno and Missions of Maynas.—1. Description by the Marqués de Selvaalegre, President of the Audiencia of Quito, 1754.—2. Description of the Bishopric of Quito, 1775.—3. Description by Requena, 1779.—4. Description by Silvestre, 1789.—5. Description by Bishop Rangel, 1814.
- III. Gobierno of Quijos.—1. Description by the Conde de Lemus, President of the Council of the Indies, 1608.—2. Description by Basabe, Governor of Quijos, 1754.—3. Description by the Marqués de Selvaalegre, 1754.—4. Description of the Bishopric of Quito, 1755.—5. Royal decree of 1772.—6. Requena's opinion, 1799.—7. Description by Silvestre, 1789.—8. Requena's opinion, 1799.—9. Royal Decree of 1802.—10. Description and census made by Bishop Rangel, 1814.—11. Résumé: points of certainty and points of doubt concerning the Gobierno of Quijos; Missions along the Napo river.
- IV. Special consideration of Canelos and Macas.—1. Canelos.—2. Macas.
- V. The entire region of the Marañón and its affluents, in general.
- VI. Lamas and Moyobamba.—1. Requena's report of 1779.—2. Requena's Consecration of 1781.—3. Requena's opinion of 1799.
- VII. Missions along the Ucayali river.—1. Requena's opinion of 1799.—2. Description by Bishop Rangel, 1814.
- VIII. Santiago de las Montañas.
- IX. Missions along the Putumayo (upper and lower river).—1. Description of the Bishopric of Quito, 1755.—2. Requena's report of 1799.—3. Official communications of the Governor of Maynas, 1803 and 1805.

§I. The Territories of the Gobierno and Comandancia general of Maynas Were Identical with Those of the Bishopric, Although Designated in a Different Manner.

The circumscription of the Gobierno and Comandancia general of Maynas, according to the Royal Decree of 1802, comprised: 1st, the ancient Gobierno of Maynas; 2nd, the Gobierno of Quijos; 3rd, all

the territories of the Marañón and its affluents, and, 4th, the towns of Lamas and Moyobamba. That is to say, the new politico-administrative entity was formed by the union of the two Gobiernos of Maynas and Quijos, already in existence, including the whole Amazonas region, to which were added Lamas and Moyobamba, which belonged to Peru.

Those territories are the same that comprised the Bishopric of Maynas, although the Royal Decree of 1802 enumerated them in greater detail in order to form certain ecclesiastical unities and to indicate the different bishoprics which were erected upon them. The decree mentions the missions of Maynas and the parishes of Quijos, Lamas and Moyobamba, and, instead of describing the Amazonas region by a generic term, names expressly Canelos, Santiago de las Montañas, the converted territories of the Huallaga and Ucayali rivers, the missions of the lower Putumayo and the missions of the upper part of the same river and the Yapurá.

We have now seen that the creation of the new circumscription of Maynas was in obedience to the idea of a *threefold* unity—of temporal government, spiritual government and missions. This idea has revealed itself clearly in all that we have set forth and especially in the phrase as to the “advantage of making the Comandancia coextensive with the new Bishopric,” which we find in the Requena report of 1799 and also in the Royal Decree of 1802.

The *edicts* and orders published by the Governors of Maynas bear in their preambles the names of the governments corresponding to the territories mentioned in the civil as well as the ecclesiastical sections of that Royal Decree. For example: “Don F. de T., Governor of the Province of Maynas, Comandante general of its missions on the Marañón river and the rivers affluent thereto on the right and left, that is, the Huallaga, Ucayali, Morona, Pastaza, Bobonaza, Napo, Putumayo, Yapurá and others; of the Gobierno of Quijos; of the parishes (cities or provinces) of Moyobamba, Lamas and Santiago de las Montañas,” etc., as in the forms used by Don Diego Calvo in 1803, Don Tomás de Costa Romeo in 1809 and Don José Noriega in 1816 (D. B. P., No. 82).

Bishop Rangel, of Maynas, in replying on the 26th of March, 1816, to this Governor Noriega, who had notified him of his departure from Moyobamba for Lamas, said to the Governor: “Nevertheless, during the presence of the proprietary Governor within the limits of his government, and this being coextensive (confrontando)

with the limits of my own government, I should not avail myself of any incident of an authority other than your own" (D. M. P., No. 133).

The territories embraced in the Gobierno and Comandancia general of Maynás being the same as those of the Bishopric, the descriptions of the ecclesiastical jurisdiction of those territories are of great importance, and especially that made by this same Bishop Rangel in 1814, after his visit to his diocese. It clearly shows the extent of the Gobierno of Maynas at the last moments of the colonial régime.

That description is found in a *letter* addressed by the Bishop, at Moyobamba, on the 9th of May, 1814, to the Intendent of Trujillo, accompanying the *census of population* made up by the Bishop from the lists of persons confirmed in the church. That most important *description* begins by saying: "*This Gobierno and this Diocese comprise,*" and ends with the following words: "Here you have, Mr. Intendent, all of the Bishopric and Gobierno of Maynas, because each has the *same boundaries*"—most convincing proof of the territorial unity of which we have been speaking (D. B. P., Nos. 76 and 77).

We proceed now to determine in detail the territories embraced in the Gobierno and Comandancia general of Maynas, following the order in which they are set forth in the Royal Decree of 1802, when this politico-administrative circumscription was made, and completing it with the more concrete circumscription of the bishopric.

§II. Gobierno and Missions of Maynas.

The ancient Gobierno of Maynas was the basis of that which was formed by the Royal Decree of 1802.

1) *Description by the Marqués de Selvaalegre, President of the Audiencia of Quito, 1754* (D. B. P., No. 28).—In this official description, addressed to the Viceroy of Santa Fe, the Marqués de Selvaalegre, states that the Gobierno of Maynas extends over all the territory of the missions that were established there by the Jesuit Fathers. Those missions, he says, extend over a great stretch along the beautiful banks of the Marañón river, which runs through all the territory included in this Gobierno, the northern and southern terminal points whereof, however, have not yet been examined,

being in possession of savages and infidels. It is confined on the east by countries belonging to the Crown of Portugal.

He then mentions thirty-four towns (all bearing religious names, because founded by missionaries), and states that all of them, as well as certain smaller ones, are under the authority of the Governor who styles himself as of Maynas, and who is appointed by the Viceroy of Santa Fe and has a salary of 400 pesos (Spanish dollars), the duties of the office being exercised by D. Alejandro de la Rosa, designated by that audiencia. The Gobierno of Maynas has no lieutenant; it names the *alcaldes ordinarios* and governors of Indians in the respective towns.

2) **Description of the Bishopric of Quito, 1755** (D. M. P., No. 67).—The Gobierno of Maynas, it says, is composed of twenty-four towns; the names we omit to avoid prolonging the relation. At the head of that Gobierno is the city of San Francisco de Borja, the latitude of which is south 4 degrees, 28 minutes and east of the meridian of Quito 1 degree, 54 minutes. The principal town of the missions (of Jesuit Fathers), in which their Superior resides, is Santiago de la Laguna, situated on the eastern bank of the Huallaga river.

"These towns are found situated in the vast expanse through which flows the famous *Marañón river*, as far as the memorable line of demarcation between the territories of the Spanish and Lusitanian (Portuguese) Crowns, the extent of both of these domains being so vast that, from the 'embarcadero' on the Napo river to the Pará river, the measurements made in recent years by order of that Royal Audiencia, show a distance of 1,356 leagues. For the particulars as to this river one had to depend on the map made by the Padre Samuel Fritz in the year 1690, drawn, though it was, upon the basis of ancient charts which were not wholly correct, until de La Condamine, the scientist and member of the Royal Academy of Sciences at Paris, produced his chart of the course of this great river, which stretches clear across South America. By its use, this scientist was able to trace an exact delineation of the course of the river and to make his astronomical and physical observations, set forth in his book entitled '*Extracts from the Diary of a Journey from Quito to Pará.*' The geographical notes in this work give sufficient material for a clear idea of this entire country. The number of its inhabitants converted to Christianity and spiritually subject to this Bishopric, is reputed to be 14,000 souls, more or less, who have never been blessed by the salutary presence among them of the Most Reverend Bishop of Quito."

3) **Requena's Description of 1779** (D. M. P., No. 90).—Says Requena in his *report* of 1779: "The Gobierno of Maynas now has the missions of Borja, San Ignacio, Santiago de la Laguna, Xeveros, Chayavitas, Paranapurás, Yurimaguas, San Regis de Lamistas, Muniches, Caguapanas, Chamicuros, Andoas, Pinches, Urarinas, Yameos, Omaguas, Pevas, Loreto, Santa Bárbara de Iquitos, Napeanos, Santa María, El Nombre de Jesús and Capucuy."

And it describes in detail each of those missions and towns with sufficient notes as to its history, location, means of communication and products. It states, for instance, that San Francisco de Borja is a city, Santiago de la Laguna is the residence of the Superior of the Missions, and that Omaguas is the capital of the Gobierno.

All these missions depended at that time upon the Bishopric of Quito.

4) **Description by Silvestre, 1789** (D. M. P., No. 68).—This states that the Gobierno of Maynas is maintained by the King. "It is the district of the Audiencia of Quito and its Bishopric extends far below the Marañón river. On this river are located several fortifications opposing and maintaining the bounds of the Portuguese of Pará and Brazil, for which purpose they are garrisoned by small detachments of troops under the command of the Comandancia general of Quito. For the most part, its towns are Indian missions, formerly in charge of the Jesuits, but now in charge of secular priests.

"It borders on Jaén de Bracamoros, Quijos and Macas, on the lands of many savage tribes on both banks of the river, and finally on the Portuguese frontier.

"Its present Governor is D. Francisco Requena, who put through the settlement of boundaries with the Crown of Portugal on the occasion of the last treaty."

5) **Description by Bishop Rangel, 1814** (D. B. P., No. 77).—"The two Missions of Maynas, or the Marañón, comprise the following towns:

"The *lower* mission: Loreto, on the Portuguese frontier; Camu-cheros, now in ruins; Cochiguinas, still in existence; Pevas, Orán, Iquitos, Asunción del Nanay, Omaguas, San Regis and Orarinas.

"The *upper* mission: Laguna, Chamicuros, Yurimaguas and Muniches at the end of the Guallaga and at the mouth of the Paranapurá; Balsa-Puerto, a new settlement; Xeveros, the capital; Chayavitis, Cahuapanas, and, near the Pongo (Ford) of Mansariche on the

Marañón, La Barranca, Borja, the first capital, and Santiago de las Montañas; Canelos is merely a scattering settlement made up of the overflow from the other towns."

"And, on the upper Pastaza," continues Bishop Rangel, "the towns of Andoas, at or near its confluence, Pinches and Santander."

§III. Gobierno of Quijos.

The Royal Decree of 1802 expressly declares to be segregated from the Viceroyalty of Santa Fe and the province of Quito and attached to the Viceroyalty of Peru and the Comandancia general of Maynas "the towns of the Gobierno of Quijos, except that of Papallacta, because of their situation on the borders of the Napo river or in its immediate vicinity." Let us see, then, what constituted the Gobierno and which were the towns referred to by that Royal Decree.

I) Description by the Conde de Lemus, President of the Council of the Indies, 1608 (D. M. P., No. 74).—In his description of the province of Quijos, dated at Madrid, February 16, 1608, the Count of Lemus, President of the Council of the Indies, says that the gobernación of that name was forty leagues long and fifteen wide, bounded on the north by the province of Popayán, on the south by the Yaguarsongo, on the west by the cordillera (ridge) and on the east by the unknown provinces that share bounds with Brazil; that that gobierno was founded in 1559 by Gil Ramírez de Abalos, having in its beginning a population of more than 30,000 Indians, and that it was ruled over by a governor, chief magistrate for the province, three lieutenants, eight *alcaldes ordinarios* and sixteen *regidores*.

The gobierno, he adds, is divided into four cities, occupied by Spaniards, and many Indian villages (seventy-three tribal subdivisions). Those cities are Baeza (head of the Gobernación), Ávila, Archidona and Sevilla del Oro (formerly Nuestra Señora del Rosaria, in the province of the Macas).

He then describes them, informing us, for instance, that Baeza extended over a space of four leagues in length and four in width, and that each of the others covers an area of three or four leagues each way; that is to say, the cities and their respective spheres of control.

2) **Description by Basabe, Governor of Quijos, 1754** (D. M. P., No. 75).—D. José de Basabe, Governor of Quijos, acting under superior orders, drew up, at Macas, May 1, 1754, an account of the provinces under his jurisdiction as Governor and Captain-General thereof.

The Gobernación of Quijos, he says, begins at the Royal Cordillera of the Andes, and, at a distance of two and a half leagues, lies a town named Papallacta. Touching upon its parish district is Mazpa; then comes Baeza, which, in former days, was a most populous city, but at this time in almost complete decay, and then come the city of Archidona and the towns of Mizagualli, San Juan de Tena and Napo.

Taking boat on the Napo river, he continues, one arrives at Santa Rosa, province of Zumaco, in which is situated the city of Ávila. He mentions besides, as belonging to the province, the towns of San Juan de Cotapino, Limpia Concepción, Nuestra Señora de Loreto, San Salvador and San José de Mote.

The Governor also gives the distances between each town and concludes this first part of his description by saying: "The foregoing relates to the ancient settlements; let us now take up the Mission."

What follows shows what constituted the mission of the Napo river and speaks of the province of Canelos, mentioning the town of that name, finally describing the province of Macas, referring to the city of that name and the towns of Zúña, Paira, Copueno, Aguayos and Zamagulies.

He brings his work to an end with the remark that the facts set forth are from his personally acquired knowledge "while occupying the office of Governor and Captain-General of said provinces."

3) **Description by the Marqués de Selvaalegre, President of the Audiencia of Quito, 1754** (D. B. P., No. 28).—In this general description of the provinces of the Audiencia of Quito, signed by its President, September 13, 1754, and submitted to the Viceroy of Santa Fe, is contained the description of the *Gobierno of Quijos* in terms similar to those appearing in that of D. Juan de Basabe, which was the occasion of his own work.

Beginning with the province of Macas, the Marqués de Selvaalegre says that to the east of the town of Riobamba "lies the city of Macas, belonging to the Gobierno of Quijos," that it holds within its jurisdiction eight towns, of which he specifies seven (San Miguel

de Narváez, Baraona, Juan López, Suña, Paira, Copueno and Aguanis).

He then describes "the situation of *Quijos*, which comprises the greater part of this Gobierno," enumerating the towns in the manner we have observed in the description by Governor José de Basabe.

He speaks later of "the *mission* which the Jesuit fathers have established in that continent and named the mission of the Napo river."

Towards the end he says that, "going from the province of *Quijos* and Sumaco to this province of Quito, one passes through *that of the Canelos* in which is found the town of that name, located on the banks of the Topo river."

And, in conclusion, the Marqués states that "*all* the provinces referred to are subject to the Governor of *Quijos* and Macas," which office pays a salary of 1,300 pesos and is then occupied by D. José Basabe y Uzquieta. This Governor, he adds, is provided with no lieutenant but has the naming of governors and magistrates for the Indies "in the forementioned towns throughout his jurisdiction."

4) **Description of the Bishopric of Quito, 1775** (D. M. P., No. 67).—This description serves to make more clear those which have gone before, classifying the towns with regard to their dependence as to spiritual jurisdiction.

"The Gobierno of the *Quijos and Macas*," it states, "comprises these *two territories*." * * * The first, or *Quijos*, is bounded on the north by the Gobierno of Popayán, on the east by the Aguarico and on the west by the Corregimientos of Quito and Tuncunga. The second, Macas, borders on the east the Gobierno of Maynas, on the south that of Jaén de Bracamoros and on the west the Corregimientos of Riobamba and Cuenca.

Quijos is made up of the two cities of Archidona and Ávila, each with its own parish priest. To the jurisdiction of Archidona belong the six towns of Papallacta, Baeza, Maspa, Misagalli, Tena and Napotoa; to the jurisdiction of Ávila, the six towns of Concepción, Loreto, San Salvador, Moto, Cotapino and Santa Rosa.

The *Macas* division of the Gobierno, the capital of which is the city of Sevilla del Oro, is composed of two parishes, that of Macas and that of Suña. The parish of Macas has under its jurisdiction, in addition to Macas, which is the city of Sevilla del Oro, the four towns of San Miguel, Baraonas, Yuquipa and Juan López. The

parish of Suña comprises the town of that name and the three adjoining towns of Paira, Copueño and Aguayos.

5) **Royal Decree of 1772.**—One of Ecuador's supporters cites, with reference to the Padre Vacas Galindo, a royal decree of September 2, 1772, dividing in two the Gobierno of Quijos and Macas, and a royal order of November 14th of the same year, appointing D. Hipólito Mendoza Governor of Macas. There were, then, in 1772, according to Ecuador's defence, three Gobiernos: Borja, or Maynas, Quijos and Macas.

We are unacquainted with the text of the royal decree supposed to have made such a division. It would be necessary to see it to give it due appreciation, for perhaps it is limited merely to the organization of some small subordinate government, and, even so, it is difficult to imagine the need of such in view of the situation to which Macas had been reduced, as shown by the above descriptions. The description given subsequently by D. Francisco Silvestre (in 1789), as we shall see in a moment, includes Macas in the Gobierno of Quijos.

6) **Requena's Report of 1779** (D. M. P., No. 90.)—Don Francisco Requena, in his report and description of October 21, 1779, says: "The *Gobierno of Quijos* now comprises (a little before the Macas provinces were taken from it, he adds in a note) three parishes, with various attached towns: those of Archidona, Ávila and Papallacta. The first two should belong to the Bishopric of Maynas and the third should remain in the Diocese of Quito, because there lie between it and that city only twelve leagues of populated country, while seventy leagues of desert waste lie between that parish and Archidona, the capital of the Gobierno of Quijos." Archidona and Ávila, continues Requena, are the two provinces into which the territories of that Gobierno are divided. He then enumerates in each the towns of their respective parishes.

The Mission of *Canelos*, he adds, composed in ancient times of the towns of Chontoa, Caniche, Poaya and Canelos, is now far advanced in its decline, being reduced to this single last-named town, which should really belong to the new Bishopric of Maynas, unless it is desired that the mission should be lost utterly by being continued under the Bishopric of Quito, from which it lies distant over eighty-five leagues of depopulated country, most difficult for inter-communication.

7) **Description by Silvestre, 1789** (D. M. P., No. 68.).—In describing the Viceroyalty of New Granada, December 9, 1789, D. Francisco Silvestre includes, in a *single Gobierno*, Quijos, Canelos and Macas, saying that *it* belongs to the District of Quito and the Bishopric of that name, and the King so disposes of it. This *gobierno* borders, towards the east and the Marañón river, on the province of Popayán and the Aguarico river and lands of the civilized tribes of Indians, and on the Corregimientos of Latacunga, Ibarra, Maynas, Jaén de Bracamoros, Loja, Riobamba and Cuenca. It comprises the missions of Sucumbios and that of the Napo river, which empties into the Marañón.

8) **Requena's Opinion of 1799** (D. B. P., No. 31).—D. Francisco Requena says that, in this opinion, the new Bishopric "ought to cover the towns of the Gobierno of Quijos, except Papallacta, which are located in the two small provinces of Ávila and Archidona, towns which are in the neighborhood of the "embarcadero" on the Napo river, the town of Canelos on the Bobonaza river," etc.

9) **Royal Decree of 1802.**—This decree expressly includes in the Bishopric "the parishes in the province of Quijos, except that of Papallacta, the curacy of Canelos on the Bobonaza river served by the Dominican Fathers," etc.

10) **Description and Census by Bishop Rangel, 1814** (D. B. P., Nos. 76 and 77).—In his *description*, Bishop Rangel states that "the province of Quijos and Ávila comprises the towns of Archidona, Napo, Napotoa and Santa Rosa, all on the banks of the Napo river, and, in the center of the province, along the small ravines, the waters of which are tributary, the towns of San José, Ávila, Loreto, Concepción, Cotapino, Payamino, Suno and Capuany, also bordering on the lower Napo where it empties into the Marañón, and, half way down the course of that river, on its bank, one comes to the towns of San Miguel and El Nombre de Jesús."

In the census of population he includes the towns of Canelos, Archidona, Napo, Napotoa, Santa Rosa, Cotapino, Concepción, Ávila, Loreto, Payamino, Suno, San José and Capucú.

11) **Résumé: Points of Certainty and Points of Doubt Concerning the Gobierno of Quijos; Missions of the Napo.**—Comparing the *descriptions* referred to, we see that all are in accord in assigning to the Gobierno of Quijos the provinces or districts of Archidona and Ávila and the missions of the Napo river, differing only in that some include Canelos and Macas while others do not.

The towns mentioned as dependencies of the cities of Archidona

and Ávila figure in the map as inclosed within a triangle, the shorter side of which is the cordillera of the Andes and the two greater sides the Coca and Napo rivers. In a pass through the cordilleras one comes upon the town of Papallacta, which was excluded from the Comandancia general of Maynas by the Royal Decree of 1802, and immediately afterwards can be seen the name of Maraña, the first town of this Gobierno, and the names of Baeza and Quijos, which were once cities. Farther along the other towns mentioned appear, more and more compactly grouped as they approach the confluence of the Coca with the Napo; and, from that point of confluence, follow the missions at a distance from the river, the last towns appearing being Capacui, El Nombre de Jesús and San Miguel.

The Marqués de Selvaalegre, in his *description* of 1754, states that the *mission of the Napo*, established by the Jesuit Fathers, covers a most beautiful country, divided into two parts. To the right, descending from Archidona, are the rivers Napo and Curaray; to the left, between the Napo and the Putumayo, the country is densely mountainous. The Indians located at the right are wild, savage and of many tongues; those to the left are entirely tractable and speak the same language. The audiencia, he adds, tried the year before to construct a fort on the Napo river "to prevent the introduction of illicit traffic with the Portuguese, who, from the Pará river and along the Marañón to the Napo, were attempting to establish trade relations as far as this province."

Below the triangle we have indicated, south of the Napo, lies Canelos, and, farther down, passing the Pastaza, is found—or, rather, was found—Macas. The differences we have observed in the descriptions of the Gobierno of Quijos concerning Macas and Canelos force us to consider specially those territories.

§IV. Special Consideration of Canelos and Macas.

Ecuador maintains in her defence that the Comandancia general of Maynas did not embrace the territories of Canelos and Macas because the Royal Degree of 1802 did not specify them at the time of its creation and because they did not belong to the Gobierno of Quijos.

1) **Canelos.**—In the descriptions of 1754 by Basabe, the Governor of Quijos, and by Selvaalegre, President of Quito, as well as in that of D. Francisco Silvestre in 1789, we have seen Canelos referred to as part of the Gobierno of Quijos.

D. Francisco Requena, in his *report* of 1779, says that "the Mission of Canelos" had been reduced to the town of that name, and, to prevent its utter loss, advised its transfer from the Bishopric of Quito, the capital of which lay eighty-five leagues away over unpopulated country, to the new Diocese of Maynas. In his *Consecratory* of 1781, he advises that there be included in this new Bishopric "the Gobierno of Quijos, embracing therein the parish of Canelos" (D. M. P., vol. III, page 283); and, in his *opinion* of 1799, after suggesting the provinces of Ávila and Archidona, he proposes "the town of Canelos on the Bobonaza river" as a component part of that Bishopric.

The Royal Decree of 1802 does not specify that town in speaking of the Comandancia of Maynas, but expressly includes in the Bishopric the "*curacy* of Canelos on the Bobonaza river, served by the Dominican Fathers."

In one of his sentences in the *description* of 1814, Bishop Rangel, while enumerating the upper missions of Maynas, says that "Canelos is merely a scattering settlement made up of the overflow of other towns," and includes it in his *census* of the Bishopric.

And Frey Antonio José Prieto, missionary priest of Canelos and endowed also with civil authority, on the 8th of October, 1814, affirms as we shall see in the chapter following, that "the town of Canelos *belongs* to the jurisdiction of the Governor of Quijos."

From all this data we are convinced that Canelos in fact belonged to the Gobierno of Quijos. But, even supposing it did not belong to it, but, instead, to Maynas or some other Gobierno, there can be no doubt whatever that it formed part of the Bishopric of Maynas, the territory of which was identical with that of the Comandancia general, as has been shown.

If the Royal Decree of 1802 expressly designated Canelos in organizing the new Bishopric, it did so because of the necessity of indicating the different ecclesiastical jurisdictions from which were taken the towns to be incorporated into it; and so we see that "the curacy of Canelos" is mentioned as a dependency of the Bishopric of Quito and served by the Dominican Fathers in distinction from the other curacies and missions which depended on other prelates, as in the case of the parishes of Lima and Trujillo, which were

served by the missionaries of Ocopa, or by the Fathers of Mercy, or by Franciscans.

In drawing up the Royal Decree of 1802, no means were available for making a detailed designation of towns, and certainly Canelos, in its insignificance, did not merit designation to the exclusion of others. A general scheme was devised by which there was to be assigned to the Comandancia of Maynas the whole of the country watered by the Marañón and its affluents. One of those affluents is the Bobonaza river on which Canelos is located. And then Canelos was included in the Comandancia general of Maynas without regard to whether it should belong to the jurisdiction of the Gobierno of Quijos.

a) *Macas*.—We have seen how the territory of Macas figures as a part of the Gobierno of Quijos in the *description* by the Conde de Lemus in 1608, in those of the Governor of Quijos and of the President of Quito in 1754 and in that of the Bishopric of Quito in 1755.

According to Ecuador's defence, the Gobierno of Quijos was divided into two parts by the royal decree of 1772 one constituting Quijos and the other Macas, without prescribing the extent of either; but, in the description of the Viceroyalty of New Granada, by D. Francisco Silvestre, in 1789, there appeared only one Gobierno of Quijos, Canelos and Macas, with a single Governor appointed by the King.

From the descriptions referred to, it may be gathered that no towns remained in the territory of Macas; that all were destroyed by the Indians. The name figures in the maps at the headwaters of the Morona, between the Pastaza and the Paute, all three affluents of the Marañón. This geographical situation, in the light of the Royal Decree of 1802, is enough to enable us to consider the territory of Macas as a part of the Comandancia general of Maynas.

§V. The Entire Region of the Marañón and its Affluents in General.

The Royal Decree of 1802, after establishing the Comandancia general of Maynas on the basis of the union of the ancient Gobiernos of Maynas and Quijos, in a general way determined the extent of the new Comandancia, declaring that to be not only along the lower *Marañón river* as far as the frontiers of the Portuguese colonies,

but also along "*all the other rivers emptying into the Marañón on its northern and southern borders, such as the Morona, Guallaga, Pastaza, Ucayali, Napo, Ywarri, Putumayo, Yapurá and others of lesser importance, as far up in each as the point at which, by reason of its waterfalls and rapids, it ceases to be navigable*" (D. M. P., No. 91).

This is identical with what was proposed by the Supreme Council of the Indies, in conformity with the Requena opinion of 1799 (D. B. P., No. 31).

It was not necessary to be more explicit in order, with the utmost clearness to fix definitively the extent of the Comandancia general of Maynas. The entire Amazonas region, watered by the lower Marañón as far as the Portuguese colonies and by all its affluents on the north and south, was embraced in that politico-administrative entity, in dependency upon and forming a part of the Viceroyalty of Peru. It is preposterous to suppose that the new government could exercise its functions and powers only on the rivers and along their borders, while the expanses of territory lying between them, isolated and cut into sections by the affluent rivers, remained under the government of the Presidency of Quito and the Viceroyalty of Santa Fe.

So, then, all question as to what territories pertained to the Comandancia general of Maynas may be resolved by ascertaining from the map those which are embraced in the area gridironed by the Marañón and its more or less important affluents.

§VI. *Lamas and Moyobamba.*

The Royal Decree of 1802 incorporated into the Bishopric of Maynas the parishes of Lamas and Moyobamba, belonging to the Bishopric of Trujillo; and, in order "to make the jurisdiction" of the new Bishopric "coextensive" with that of the Comandancia general, attached to the Bishopric the towns mentioned, speaking of them as then belonging already to the Viceroyalty of Peru and as separated from its other provinces.

Let us see what were those groups of towns, by reference to the Requena descriptions, consulted in drawing up that Royal Decree.

1) *Requena's Report of 1799* (D. M. P., No. 90).—As shown by that report, the *Missions of Lamas* were in charge of the Jesuits and dependent upon Quito, but, when that religious order was driven

out, they were incorporated into the Bishopric of Trujillo, because nearer to that city than to Quito.

The missions of Lamas consisted of five towns: Lamas (the capital, in which resided the principal magistrate, appointed by the Viceroy at Lima), Morro, Tabalosos, Amasifueno and Cumbaza, scattered along the Cumbaza river as it flows toward the Huallaga, and along the latter to the Marañón. These had to be attached to Maynas, not only because of their spiritual needs but for commercial convenience.

2) **Requena's Consectary of 1781** (D. M. P., No. 90).—In this amplification of his earlier report, Requena states that he has come into possession of better information concerning Lamas and proceeds as follows to make his description more precise:

In the early days, Lamas was a *gobierno* incorporated within the *Corregimiento* of Chachapoyas, the territory of which was then divided into two small provinces: those of *Lamas* and *Moyobamba*, each under a lieutenant.

The first, *Lamas*, had two parishes: those of the city of Lamas (where a *cabildo** was located) and Tarapoto, and, in connection with these, the three small churches Tavalosos, San Miguel del Rio and Cumbaza. In the five settlements referred to there were 420 families, of which 200 were white.

The second, *Moyobamba*, contains two more parishes: *Moyobamba*, with the dependent churches of Uquiguas and Orongos; and Soritor, with the dependent churches of Yoanari, Toe, Avisao, Yantalo and Nijaque. In these nine settlements there were nearly 700 residents, for the most part white.

3) **Requena's Opinion of 1779** (D. B. P., No. 31.)—With the spiritual government of the missions of Maynas, says Requena in his opinion, should also be entrusted to the College of Ocopa (a most necessary step in the interest of the missions) the jurisdiction over the parishes of Lamas and Moyobamba, they being parts of the *Subdelegación* of Chachapoyas, Bishopric of Trujillo, and situated in inaccessible mountainous country.

Thus, he adds, there would be established a cordon of hospices,

*A *Cabildo* was a chapter of a cathedral or collegiate church; also the name given to the meeting place and session of such chapter; also designated the membership of a religious body, or an organization of laymen for religious purposes in a town. The term is also sometimes applied to an *ayuntamiento* or municipality as on page 157 (*Diccionario Enciclopédico*, by Zerolo).—Translator.

running through Lamas, Moyobamba, Chachapoyas, Hualillas, Guanuco and Tarma, reaching as far as Ocopa, providing bases from which assistance could be extended to the zones of operation in reducing the Indians to Christianity.

§VII. Missions Along the Ucayali.

We now complete the description of the Comandancia general of Maynas (created by the Royal Decree of 1802) with a description of the Bishopric contained in that decree, which designated expressly the towns and missions along the affluents of the Marañón, all, as we have said, comprised in this Comandancia.

The Royal Decree provided that the new Bishopric should be made up of "all the converted territories now served by the missionaries of Ocopa along the Huallaga and Ucayali rivers and along the mountain passes through which they are approached, and which are in the jurisdiction of the Archbishopric of Lima."

At that time there lay along the Huallaga the upper missions of Maynas and others which came from Moyobamba and Lamas. Between the Huallaga and the Ucayali, and on the farther side of the latter, new missions had been started, which it was necessary to maintain for the general welfare.

1) **Requena's Opinion of 1799** (D. B. P., No. 31).—The conquest, says Requena, of the river Ucayali and all its affluents from its mouth at the Marañón should be undertaken as proposed by him. This is necessary for the conversion of the Indian tribes which occupy the surrounding territory and for the preservation of the missions of Maynas, it appearing that the Christianized Indians would frequently leave the missions and rejoin their infidel brethren on the Ucayali, and that the settlements were always subject to invasion by the savage tribes in that region.

From the very year, 1779, in which I established myself in the town of San Joaquín de los Omaguas, almost opposite to the fore-mentioned mouth of the Ucayale, I was apprehensive of the harm that could be done by such savage neighbors. They were not slow in giving proofs of their intentions, attacking me in that town with a force in canoes, and then passing up the Marañón as far as the town of Laguna with the purpose of forcibly seizing and carrying away their fellow Paños tribesmen and committing depredations on all property encountered in their course.

This conquest of the Ucayale will carry with it other important advantages affecting the status and preservation of that domain. The Ucayali river pursues its ramifications throughout the whole of the Viceroyalty of Peru, extending through the jurisdiction of Lima, Guamanga, Cuzco and even La Paz; and it has been the constant endeavor of the Portuguese at all times to extend their dominion to those parts. Once they have penetrated the Ucayali region, it would be most difficult to dislodge them and would entail a great drain on the riches of Peru.

These were some of the reasons advanced by Requena to bring about the formation of the Comandancia general of Maynas.

2) **Description by Bishop Rangel, 1814.**—The Royal Decree of 1802, having been carried out, Bishop Rangel, in describing his Diocese of Maynas in 1814, gave an account of the missions on the Huallaga and Ucayali, saying of the latter: “The *Ucayali* region is but recently reclaimed from paganism. Sarayacu, the capital, Bepuana, Cunibos de Canchahuaya, Sehipibos de Cuntamana, Sehipibos del Rio Pisuqui and several other points, lost or recently gained, composed the department.”

§VIII. Santiago de las Montañas.

The Royal Decree of 1802 expressly includes the parish of Santiago de las Montañas immediately after those of Lamas and Moyobamba, all three having belonged up to that time to the Bishopric of Trujillo.

The settlement of Santiago de las Montañas was annexed for temporal government to the Gobierno of Jaén when the Corregimiento of Yaguarsongo was abolished in 1623 (D. M. P., Nos. 145 and 146). Situated at the confluence of the Paute, or Santiago, with the Marañón, there can be no doubt that the settlement became a part of the Comandancia general of Maynas in accordance with the Royal Decree of 1802, not only because that decree speaks of its curacy, but also because of the general principle of having the Comandancia general comprise the entire region of the Amazonas rivers. It thus passed into the jurisdiction of the Comandancia with the unpacified territory lying between those rivers over which it had jurisdiction.

We find most interesting what Requena says in his *report* of

1779 of Santiago de las Montañas as to his plan to have that town included in the projected circumscription of Maynas.

The city of Santiago de las Montañas, he says, lies at the mouth of the river of that name, which river collects all the waters in the eastern water-sheds of the cordillera of the Andes, in the jurisdiction of the Gobierno of Cuenca and Corregimiento of Loja, and empties into the Marañón at the entrance of the Pongo de Manseriche.

In those days that city was reduced to a small vicinage of occupation, acknowledging subordination to the Governor of Jaén, and, in spiritual affairs, to the Bishop of Trujillo, who had never visited the settlements.

The many streams gridironing the Marañón from Santiago to Jaén hindered frequent communication between the cities; and so it was that only once a year did the inhabitants of the former locality go into Jaén to sell their produce and pay the government dues. But, on the other hand, they were able to maintain constant communication with Borja or Omaguas and could be better cared for by the Governor of Maynas.

The settlement of Santiago, once incorporated into the Gobierno and Bishopric of Maynas, a vast field would be opened up for the missions, rich gold deposits would be found about the ancient city of Logroño and an easier route established for the inhabitants of the mountain districts, permitting transportation of produce from the Marañón region, which is now lost to commerce.

Such a measure would operate toward success in the conversion of the uncivilized Indians and those who had reverted to savagery along the borders of, and in the ravines about, the Santiago river, which in former times belonged to the ancient Gobernación of Yaguarongo. In the earlier days of the conquest there were many Spanish cities and towns in that territory, while today but few settlements are found and those scarcely merit the name of hamlet (D. M. P., vol. III, page 274).

These reasons, advanced by Requena, offer the best and most approved criterion for interpreting the provisions of the Royal Decree of 1802, upon which to incorporate the territory of Santiago de las Montañas not only into the Bishopric but also into the Gobierno and Comandancia general of Maynas.

§IX. Missions Along the Upper and Lower Putumayo.

And, finally, the Bishopric of Maynas, according to the Royal Decree of 1802, comprised "the missions of the Order of Mercy along the *lower waters* of the Putumayo, belonging to the Bishopric of Quito, and the missions located along the *upper waters* of the same river and along the Yapurá, called the *Sucumbios*, which were in charge of the Franciscan Fathers of Popayán."

We sometimes see those two groups of missions designated in common by the name of *Sucumbios Missions*, but, as the Royal Decree applies that name only to the upper group, stating that they had been so styled in the past, we think it preferable to adopt the common appellation of *Missions on the Putumayo*, distinguishing them as *upper* and *lower*.

Glancing at the map, we observe that the name *Sucumbios*, by which the Royal Decree designates the missions on the *upper* part of the Putumayo, figures as the name of a town and as an affluent of the Putumayo, *south* of that river; and, as this might lead to error and confusion, we deem it wise to suggest that when the *upper* or *higher* part of the river is spoken of, it is with reference to its source and greater land elevation, while by the *lower* part is meant its course towards its mouth. In like manner we have also noticed that the expression *upper* missions of Maynas denoted those located south of the Marañón nearest its source, while the designation *lower* indicated those established on the north and more remote. This explains why we see towns on both sides of the Putumayo mentioned as pertaining to the *Sucumbios Missions*, which is, strictly speaking, the name properly belonging to the upper missions.

1) **Description of the Bishopric of Quito, 1755** (D. M. P., No. 67).—After speaking of the territory of Quijos, this description continues: "There belong also to the *Gobierno of Quijos* the *Sucumbios Missions*, with their towns: the leading town of San Miguel, San Diego de los Palmares, San Francisco de los Curriguaxes, San Pedro Alcántara de la Coca, San Christóbal de los Yagtuages and San José de los Abugcees; the number of inhabitants is estimated at two thousand."

2) **Requena's Report of 1779** (D. M. P., No. 90).—The Missions of *Sucumbios*, says Requena in this report, are served by the members of the religious order of San Francisco and are subject

to the Bishop of Popayán. They stretch out to the east of the Gobierno (Popayán) over a vast unpopulated country.

The approach most in use is that by way of the city of Almaguer, six days distant through a ridge of the mountains and then nineteen days afoot through woods and mountains to the "embarcadero" on the Uspayacu, a river emptying into the Putumayo. At the headwaters of this river and that of the Caquetá, or Yapurá, are the Christianized communities of San Diego, Amoguajes, Mamo, La Concepción, San Francisco Solano and Santa María, the first four on the Putumayo and the last two on the Caquetá, sad relics of the extensive field of those missions, which at the beginning of this century counted sixteen towns crowded with inhabitants, while to-day, surrounded by fierce Indian tribes, these six towns boast but few souls. In the same mountain district were located the ancient cities of Mocoa, Écija and Sebondoy, long since destroyed by the attacks of the savages.

He then proposes the method that should have been followed in the establishment of the missions and the advantages to be gained by their incorporation into the Bishopric of Maynas. As a result of such incorporation there would stretch away to a distance from the Putumayo a line of towns, beginning at Concepción, the most advanced of the Sucumbios missions on this river, and extending to its mouth at the Marañón. This would place them in communication with the Maynas missions, facilitate the administration of the Superior and further the conversion of great numbers of the Indians.

If on a visit to the towns on the Napo the Bishop wishes also to visit the Sucumbios missions, he must penetrate this region by way of the Aguarico river, passing the now secularized towns of Aguarico and Sucumbios.

Those two parishes served by secular priests ought to be incorporated, as to civil affairs, with the Gobierno of Maynas in the same manner that they are attached to their Bishopric. The inhabitants recognize the domination of no temporal magistracy, functions of that character being, as a rule, exercised by the parish priests.

3) **Official Communications of the Governor of Maynas, 1803 and 1805.**—On the promulgation of the Royal Decree of 1802 the Governor of Maynas, D. Diego Calvo, in compliance with its provisions concerning missions, addressed an official communication to

the Viceroy of Lima, September 24, 1803, giving an account of the conditions existing in the missions on the Putumayo.

In that official communication Calvo relates how certain Indian chiefs, in 1782, repaired to his predecessor, D. Francisco Requena, with appeals for aid and protection, and how through the efforts of Requena, the President and the Bishop of Quito despatched several members of the Order of Mercy, who, in 1784, stayed to remain in charge of the *lower missions*, and in a short time founded the town of Asunción.

He states that the towns which comprised the *upper* and *lower* Putumayo Missions, from Pasto to the most distant, were the following: Mocoas, San Agustín de Nieto, San Diego, Amaguates, San José de Picudo, San Tomás de Mamos, La Concepción, Agustiniños, San Ramón, La Asunción de Nuestra Señora, San José de Villalengua and San Antonio de los Chumanos; and he adds that the towns of San Ramón, San José de Villalengua and San Antonio were lost and that others could not be formed for lack of missionaries, who should be sent forward in great numbers to promote these missions and maintain them (D. B. P., vol. II, p. 43).

In another *official communication* by the same Governor, addressed also to the Viceroy of Peru, June 16, 1805, he reminds him of his former communication and insists upon his request for missionaries, stating that the *upper missions* called the Sucumbios consisted of eight towns while the *lower missions* had become reduced in number to four, but could have been increased by three more by reason of the already considerable assemblage of Indians if the missionaries had gone forward (D. M. P., vol. VII, p. 213).

Such official notes, as well as others we shall cite in the following chapter, will show that the Royal Decree of 1802 was carried into effect, the upper and lower missions on the Putumayo being placed in dependency upon the Viceroy of Peru through the mediation of the Governor of Maynas; and there can be no possible doubt that such disposition should have been made, since that Royal Decree extends the Comandancia general of Maynas, as we have shown, over all of the territory of the affluents of the Marañón, mentioning expressly the Yapurá and the Putumayo.

CHAPTER IV.

Gobierno and Comandancia general of Maynas.

(Divisionary Lines)

SUMMARY:

- I. General demarcation of the Gobierno and Comandancia of Maynas.
- II. Descriptions by Bishop Rangel, 1814 and 1822.
- III. The frontier line with Brazil and the Northern and Southern boundaries.
- IV. The Western line.—1. Gobierno of Quijos; the town of Papallacta.—2. The navigability of the rivers.—3. Headwaters of the Caquetá, or Yapurá, and the Putumayo.—4. Agoyán Falls on the Pastaza.—5. The town of Paute on the Paute, or Santiago, river.—6. The Chinchipe at the mouth of the Canchis.—7. Complete contour.

§I. General Demarcation of the Gobierno and Comandancia general of Maynas.

The territories we have described embrace an immense expanse, having for its western line the cordillera of the Andes, from whence spring the rivers which, flowing almost parallel and in an oblique direction, empty on the left and northern bank of the Marañón.

Commencing at the north, we find first the Caquetá or Yapurá river, which marks the divisional line with New Granada and penetrates into Brazil. Between the Yapurá and the Aguarico, or, if one prefers, the Coca, in territories through which flows the Putumayo, are located the Sucumbios Missions, and, following the course of the Putumayo, we come to the lower missions bearing that name. Continuing along the cordillera of the Andes, and within the triangle formed by that ridge and the rivers Coca and Napo, lie the provinces of the Gobierno of Quijos, recognized by all, and, following the course of the Napo, are found the missions of that name. Then comes the territory of Canelos on the Bobonaza river, between the starting point of the Napo and the Pastaza. Past the Pastaza and before reaching the Paute, we come upon Macas,

among the affluents of the Morona. In the angle of the Paute, or Santiago, and the Marañón, lies Santiago de las Montañas, with its jurisdiction over the Jibaros and Antipas Indians. The last northern affluent of the Marañón is the Chinchipe, the border line of the province of Jaén.

Then comes the upper Marañón, intersecting from south to north the province of Trujillo, constituting the eastern boundary of the province of Jaén as far as the mouth of the Chinchipe, at which point it begins to double to the right, following which direction, that is, from west to east, from its confluence with the Santiago until it penetrates into Brazil. Emptying into the Marañón on its right and southern bank are three great affluents: the Huallaga, from the mouth of which, eastward, the larger river is called lower Marañón; the Ucayali, from the disembogement of which in the Marañón the latter becomes known also as the Amazonas river, and the Yavarí, which is the boundary with Brazil.

The *Maynas* missions—that is, those of the Marañón—begin under the designation of upper missions along the southern part of that river on both sides of the Huallaga and continue, as the *lower* missions, along the course of the Marañón, chiefly on its left bank, as far as the Portuguese colonies. Those missions proceeded with their settlements at the mouths of the northern affluents of the Marañón, or following them up stream. The Maynas Missions thus became, by reason of the location and length of the Marañón, the western extremity, the central line and the most important part of the Bishopric and Comandancia general of Maynas, maintaining relations and communication with the other parts of those governmental entities.

The circumscription of Maynas, to the south, was completed by the aggregation of the ancient provinces of Moyobamba and Lamas and the territories of newly converted Indians on the Huallaga and Ucayali, mentioned in the Royal Decree of 1802.

It follows, therefore, that the general demarcation lines of the Comandancia general of Maynas were: the western line which, following along the cordillera of the Andes and terminating at the confluence of the Chinchipe with the Marañón, marks out, from the Yapurá, the western boundary also of the upper missions of the Putumayo, called the Sucumbios, the indisputable provinces of the Gobierno of Quijos, and the territories of Canelos, Macas and Santiago de las Montañas; the southern line, which brings in

Moyobamba, Lamas and newly converted territory on the Huallaga and Ucayali; the line running southeast along the course of the Yavarí which traces the frontier of Brazil and the eastern line, which is this same frontier, and the northern line, running in a northerly direction along the course of the Caquetá and Yapurá.

§II. Descriptions by Bishop Rangel, 1814 and 1822.

The statement we have just made from a study of the territories is confirmed by the description prepared by the Bishop of Maynas, Sánchez Rangel, of the extent of his diocese, which we repeat was identical with the *gobierno* and *comandancia* general.

In his letter to the Intendent of Trujillo, in 1814, the Bishop says: "This *Gobierno* and this Diocese comprise: first, the province of Quijos, on the Quito side; the Putumayo, Yapurá and Sucumbios on the Popoyán side and still on the side of Quito; and Canelos, on the Cuenca side; on the side of Trujillo, the province of Moyobamba and several streams from the Guallaga and Marañón; on the Lima side, the Guallaga and Panataguas; at Tarma, the entrances to the Ucayali, and, towards Huamanga, the Missions of Huantor. This is the circumscription, or, rather, these are the boundary points, of the *Gobierno* of Maynas and its Bishopric, with respect to discovered or conquered territory; and, as to territory not reduced to possession, the delineation follows the waters of the Marañón towards Portugal * * * " (D. B. P., No. 77).

In his *report* of October 17, 1822, addressed to the Nuncio of His Holiness, concerning the situation in his diocese, the Bishop says to him: "I have here these countries: Equatorial line at the south, and, in the northern part: provinces of Quijos, Ávila, Aguarico, Sucumbios, Yapurá, headwaters of Putumayo towards Pasta; that of the Yaguas and other nations in the lower part of the Putumayo; that of Canelos on the Bobonaza, to which pertains the wilderness of La Palma (ancient province); that of Maynas in the center, which comprises the upper and lower missions of that name in the watersheds of the Marañón, or Amazonas, and those of the Guallaga at the south; and, to the north (the missions), at the mouths of the Santiago de las Montañas, Pastaza, Nanay and other rivers which empty into the Marañón, belonging formerly to Quito and Popoyán."

He mentions the towns of the Bishopric and fixes the demarcation of the same by degrees of longitude and latitude (D. M. P., No. 104).

§III. The Frontier with Brazil and the Northern and Southern Boundaries.

The *treaty* between Spain and Portugal of October 1, 1777, stipulated as to their boundaries in America, in Articles 11 and 12, that the line established running from east to west until it meets the Yavarí shall continue downwards along the waters of that river to where it empties into the Marañón or Amazonas; that it shall follow the lower waters of the Amazonas as far as the westernmost mouth of the Yapurá and continue from this western mouth upwards along the Yapurá to the point where are located the Portuguese establishments on the banks of this river and the Negro river. Soon afterwards, as we shall now see, the State of Peru ceded to Brazil the angle of the Marañón with the Yapurá, connecting this river by a line from the point of the Apaporis instead of its last western mouth (Avatiparaná) with the mouth of the Yavarí.

D. Francisco Requena, Boundary Commissioner, in his *report* of 1779, proposed that the capital of the new Bishopric should be Omaguas, inasmuch as by the treaty of 1777 "there are incorporated into the dominions of His Majesty the northern shores of the Marañón to the westernmost mouth of the Yapurá, and the acquisition of those lands requires, for the public good, that establishments of Spaniards be formed along the new frontier for the purpose of observing and checking the Portuguese, that is, at the mouth of the Yapurá and at the mouths of the Putumayo, Yavarí and Ucayali" (D. M. P., vol. III, p. 278).

The Comandancia general of Maynas bordered, then, on the colonies of Brazil along the Yavarí, the Marañón, or Amazonas, and the Yapurá, as far as the point where the Portuguese establishments were grouped on this river and on the Negro.

From the point where those establishments terminated, the *Yapurá* river marked the line separating the Comandancia general of Maynas, as well as the Viceroyalty of Peru, from the Viceroyalty of New Granada. It is a question for argument whether the Royal Decree of 1802, having expressly included the Yapurá in that Comandancia and having spoken of the missions located *on* that

river, its left bank also was included therein; but there can be no doubt that the Yapurá formed part of the Comandancia by virtue of those provisions of the decree.

Neither can it be doubted that there was included in the Comandancia the entire southern region of the Marañón, for the Royal Decree so provides, mentioning the three great affluents on the south: the Huallaga, Ucayali and Yavarí. The last named river was the southeast frontier with Brazil, and an exact determination of the *southern line* of the Comandancia, from the beginning of that river to the Chinchipe, was of small importance as those territories belonged to Peru, some of them being expressly mentioned in the royal decree creating the Audiencia of Lima, such as the province of Moyobamba and the country of the Motilones, in its eastern part.

§IV. The Western Line.

The western line of the Comandancia of Maynas—that is, the line beginning at the headwaters of the Yapurá and ending at the Chinchipe river, is the most interesting because it has to mark the frontier with the Republic of Ecuador north of the province of Jaén.

To indicate that line in a general way it is enough to say that it is the line which leaves within the Comandancia general of Maynas all the towns and territories we have enumerated and described as forming part of that circumscription. But let us establish the line more concretely.

1) **Gobierno of Quijos; the Town of Papallacta.**—The Royal Decree of 1802 states most conclusively: "I have resolved that there shall be segregated from the Viceroyalty of Santa Fe and from the province of Quito and aggregated to that Viceroyalty (Peru) the Gobierno and Comandancia general of Maynas, with the towns of the Gobierno of Quijos, except that of Papallacta." All of the towns of the Gobierno of Quijos, except Papallacta, must, then, lie within the demarcation of Maynas. The town of *Papallacta* is, therefore, an indisputable point on the western line, the boundary on the Quito side: The nearest town, continuing now within Quijos, is that of Maspa, and consequently the dividing line must pass between Papallacta and Maspa. The distance between those two towns and the location of the others belonging to the Gobierno of Quijos may be noted in the descriptions and their documentary ac-

companiments to which we have referred. The official communications of the Governor of Quijos and of the President of Quito, in 1754, state clearly that the Gobernación of Quijos begins in the cordillera of the Andes.

2) **Navigability of the Rivers.**—Continuing, the Royal Decree of 1802 provides that “that Comandancia general shall *extend*, not only along the lower Marañón river to the frontiers of the Portuguese colonies, but also along all the other rivers emptying into the Marañón on its northern and southern banks, such as the *Morona, Guallaga, Pastaza, Ucayali, Napo, Yavarí, Putumayo, Yapurá* and *others* less considerable, *as far up in each as the point at which, by reason of its waterfalls and inaccessible rapids, it ceases to be navigable.*” We have here another definite rule derived from that sovereign act: the points in the rivers mentioned and in others of lesser magnitude, at which they cease to be navigable because of their falls and inaccessible rapids, are *boundary marks*; those points when connected by lines leave within Maynas the towns and their territorial districts watered by the rivers referred to and mark out the divisionary line.

What is meant by the word *navegables*? According to the dictionary of the Academy, the term *navegable* is used “in speaking of a river on which one can *navegar*.” *Navegar* is “to make a journey, or to go, by water, by means of an *embarcación*, or by ship. *Embarcación* is “a *barco* in which one can navigate,” and *barco* “a boat made of wood, iron or other material, provided with apparatus for propulsion, and which floats and can transport, by water, persons or objects.”

It is enough, then, that by use of current language we can speak of, as navigable (*navegable*) a river on which one can travel by means of vessels, however simple they may be, transporting persons and objects. And it is clear that when the Royal Decree of 1802 referred to the Maynas rivers as being *navegables*, its authors had in mind the boats then used by the Indians, missionaries and public officers in travel upon them—canoes, rowboats, or sailboats.

What are these points at which the northern affluents of the Marañón cease to be navigable? This is not a question of *law*, with respect to which there can be any doubt, but a question of *fact*, to be accepted, or proven.

3) **Headwaters of the Caquetá or Yapurá, and the Putumayo.**—Peru's defence has submitted maps on which appear, in great de-

tail, the northern affluents of the Marañón, and, among them, a *chart of the Napo and Putumayo rivers*, signed by the cartographer, Carlos Hoempler, in November, 1903. On it appear minutely the data as to navigation gathered by the experts mentioned therein. We are not going to enter into these details, nor shall we stop to speak of the Napo river, for enough has been said with regard to the town of Papallacta, while dealing with the subject of the boundary line of the Gobierno of Quijos; but we shall set forth what may be necessary to establish the boundary of the Sucumbios Missions, in the light of documentary evidence.

In the memorial of October 25, 1894, presented by the Plenipotentiaries of the Government of Colombia, Sres. Galindo and Tanco, to the Plenipotentiaries of Ecuador and Peru, at the Lima conferences held in that year for the settlement of boundaries it is maintained that the Putumayo and Caquetá "*are navigable* as far as the port of *Limon* and the port of *Guinés* (not exactly on their own waters but on that of their affluents), an ascent of fifteen or twenty leagues from the city of Pasto (perhaps today the second city in Colombia)," for which reason they did not consider it to their advantage to accede to Peru's request. It should be noted that those plenipotentiaries treated the question as in the field of compromise and had acknowledged that the Royal Decree of 1802 "is as authentic as it is effective and conclusive" (D. M. P., vol. II, pp. 23 and 29).

The port of *Limón* is situated on the *Mocoa* river near its mouth in the Caquetá. The port of *Guinés*, or *Guinéo*, is found on the river of that name, affluent to the upper Putumayo on the left bank.

Furthermore, it must be taken into consideration that the Royal Decree of 1802 expressly includes "the missions known as the Sucumbios, situated along the upper part of the Putumayo river and on the Yapurá." The line should, therefore, be traced so as to include within Maynas the settlements comprising those missions; among them is *Mocoa*, mentioned by the Governors of Maynas, Requena (1779) and Calvo (1803), and *Sebondoy*, mentioned also by Requena.

Requena likewise states, in 1779, that the converted territories of San Diego, Amogujes, etc., are at the *headwaters of the Putumayo and Caquetá, or Yapurá, rivers*; and Bishop Rangel reported, in 1822, as belonging to his diocese, "Aguarico, Sucumbios, *Yapurá*, *headwaters of the Putumayo*, towards Pasto."

The line indicated by the *Mocoa* and *Andaquies* mountains, the true limits of the Sucumbios Missions, enclosing the headwaters of the Caquetá, or Yapurá, and of the Putumayo, and the most distant towns of Mocoa and Sebondoy, within the *Comandancia* and Bishopric of Maynas, completely establishes its boundary on this side of its territory.

4) **Agoyán Falls on the Pastaza.**—The Pastaza originates near the volcano of *Cotopaxi*, and, on crossing the cordillera of the Andes, forms a cascade—the Falls of Agoyán, from which point it begins to be navigable.

Such is the assertion made in the *Geography of Ecuador*, by D. Manuel Villavicencio, one of the most ardent supporters of that country in the matter of boundaries and a pronounced adversary of the Royal Decree of 1802, who describes with much care the Amazonas rivers, after having traveled through them.

The Pastaza, says that Ecuadorian geographer and explorer, has its source in the volcano of Cotopaxi and goes by different names until, from the Agoyán onward, it takes the name of Pastaza, which it preserves down to its disembogement in the Amazonas. "In its headwaters it flows rapidly until, united with the Chambo, it breaks through the eastern ridge of the Andes and runs with greater rapidity through a deep and narrow channel cut through granite rocks to precipitate itself over the *Cascade of Agoyán* from a height of about forty yards. * * * From that point its current is not so rapid, even permitting *navigation* by canoes. As soon as the Pastaza is augmented by the Bobonaza, its current becomes tranquil, its turns majestic and its aspect magnificent; it almost rivals the Napo in its wealth of waters and its susceptibility to *steamboat navigation*. * * * The Pastaza is a beautiful river and one can travel up its course 90 leagues by steam and 20 more by small boats. Through its channel the *navigator* can approach nearer the *cordillera* than by the Napo; but one must overcome the ferocity of the savage tribe that is in almost complete possession of its right banks and opposes somewhat of an obstacle to navigation. * * * The Pastaza in the territory of *Canelos* is auriferous. * * * "

A Dominican missionary, in a volume published in Paris in 1889 (*Voyage d'exploration d'un missionnaire dominicain chez les tribus sauvages de l'Equateur*), confirms the fact that the Cascade of Agoyán is the terminal point of navigation on the Pastaza (B. P., pp. 160, 161).

5) **Town of Paute on the Paute, or Santiago, River.**—As to that town, the same Ecuadorian geographer and explorer, D. Manuel Villavicencio, says:

"The course of the Santiago river is 170 leagues in length, of which 100 are navigable by steamboats and 30 more are navigable by the savages, who come nearly up to the *skirts of the cordillera*, where the course is rather rapid, but without any falls or cascades. We believe that one can even follow it over the rise of the cordillera and reach the neighborhood of the *town of Paute* without the slightest risk, for, even in its course through the cordillera, there is some backwater and overflow of its banks. It has been thought that there were cascades on that river beyond the pass through the cordillera, but this is erroneous. Instead of this, on the contrary, its breadth and tranquil sweep give it a majesty and mien of great beauty which invites most successful *navigation*; and the sole difficulty which presents itself is that its banks, almost as far as its mouth, after breaking through the cordillera, are overrun by savages, some friendly and others hostile to travelers. * * * The Gualaquizas entertain certain relations with the Christians, and, if sagacity and intelligence are exerted, those who to-day constitute this obstacle to navigation may perhaps become the boatmen in the transportation of all the riches this pass contains." (B. P., p. 158.)

6) **The Chinchipe at the Mouth of the Canchis.**—The Chinchipe has its origin in the province of Loja, doubles around the ancient town of Loyola, in the direction of north to south, takes in the Canchis on its right bank and empties into the upper Marañón. The confluence of the Canchis with the Chinchipe marks the terminal point of the western line of the Amazonas region of Peru, if the province of Jaén continues to belong to Peru. On the hypothesis that that province should belong to Ecuador, the Marañón and its affluent, the Chinchipe, would constitute its eastern boundary, either because the provinces of Chachapoyas and Moyobamba have always been Peruvian or by virtue of the Royal Decree of 1802.

7) **Complete Contour.**—Taking for the point of departure the confluence of the Canchis with the Chinchipe, the western line of the Amazonas region claimed by Peru, is traced by following the Chinchipe in a straight line, continuing in the same direction to the town of Paute, running along the cordillera of the Andes to the Falls of Agoyán, from those falls to the town of Papallacta (in that part of the cordillera called Cotopaxi), and from that town, over the mountains of the cordillera, bearing the names of Cayamburu, Andaquíes and Mocoa, to the Caquetá, or Yapurá.

CHAPTER V.

Gobierno and Comandancia general of Maynas.

(Validity, Execution and Confirmations of the Royal Decree of 1802.)

SUMMARY :

- I. Validity of the Royal Decree of 1802 according to Spanish colonial law.
- II. Execution of that Royal Decree.—1. On the part of the President of Quito; notification of the towns.—2. On the part of the Viceroy of Santa Fe.—3. On the part of the Viceroy of Peru.—4. On the part of the Ecclesiastical authorities.
- III. Confirmations of said Royal Decree.—1. Petition of Barón de Carondolet, denied in 1805.—2. Petition of Bishop Rangel, denied in 1818.—3. Petition of President Montes, denied in 1819.

§I. Validity of the Royal Decree of 1802, According to Spanish Colonial Law.

After examining the contents of the Royal Decree of June 15, 1802, it becomes important to demonstrate its validity and effectiveness, for, the Government of Ecuador having recognized, in 1857, that that act "offered some apparent foundation" for the claims of Peru as to the territory of the Amazonas region, denied, as she had denied in 1854, that it could have had any legal force; that it had been carried into effect, or that it could be held to be an accomplished act in the administrative system (D. B. P., Nos. 22 and 24).

The Royal Decree of 1802 possessed all the compelling force characterizing the earlier decrees as to territorial division which were inserted as laws in the *Compilation of the Indies*, and possessed by those subsequent to that code in relation to the creation of the original Viceroyalty of New Granada, from which it segregated the territories of Maynas.

Law 1, Title 1, Book II of the *Compilation of the Indies* stamps with the character of law all measures contained therein emanating from the Crown, and, in the language of its signer, Philip IV, provides that, if it should be necessary to make further enactments, "the Viceroys, presidents, audiencias, governors and alcaldías

mayores shall give us notice and report through the Council of the Indies," in order to make possible a decision as to what action to take. Law 2, Title 2, Book II confers upon the Council of the Indies supreme jurisdiction over those enactments, with power "to direct, and, with our (the King's) advice, to make laws, decrees and ordinances, and to render decisions in our name in general and special matters."

It was by royal decrees that the first Viceroyalties of New Spain and Peru were created, as also the twelve audiencias of the Indies. Law 1, Title 15, Book II, of Philip IV, provides that "for the present, and until we shall otherwise order, said Audiencias shall be maintained, and, in the district of each, the gobiernos, corregimientos and alcaldías mayores now existing; and no innovation shall be made in any of such districts without express order from us or our Council." And in Law 7, Title 2, of the same book, the Council is cautioned, as to the division and partition of the territories discovered, or to be discovered, to be careful that that division shall correspond in matters temporal and spiritual—the governments with the bishoprics, and so forth.

By virtue of the reservation as to the modification of the territorial division, and even without the need of it, the successors of Charles II (who published the *Compilation of the Indies*) could, in the exercise of the all-embracing sovereignty enjoyed by them, alter the system of division prescribed in that body of laws, creating new viceroyalties and shifting about among them their territories as in the case of the audiencias.

In 1854 and 1857 the Government of Ecuador, for the purpose of impugning the validity of the Royal Decree of 1802, took the position that it had not been acknowledged by the Viceroy of New Granada and that Barón de Carondelet, President of Quito, protested against it, in accordance with the provisions of Law 24, Title 1, Book II of the *Compilation of the Indies*; but, as we shall see presently, not only the Viceroy of New Granada, but the President of Quito as well, complied with it and gave orders for its being carried into effect.

But it is by no means certain that royal decrees depended for their legal force and effectiveness upon their acknowledgment or acceptance by the Viceroys, or that, because of the alleged opposition thereto by the President of Quito, the Royal Decree of Charles IV could have been rendered inoperative. The very law cited (Law

24, Title 1, Book II) commands the Viceroys, presidents, governors, etc., to carry into effect, and to cause to be carried into effect, all royal decrees and sentences rendered in the King's name, "as soon as they shall see them or receive notice of them," under pain of losing half their property if they should fail to do so, and adds that, if the matter involved should admit of appeal, it might be granted, but "without, by so doing, suspending compliance with, and enforcement of, the decrees and sentences, except where, by such enforcement, notorious scandal or irreparable injury would result." The Royal Decree of 1802, however, surely could not be included in that direction.

In the framing of the Royal Decree of 1802, the reports from the proper authorities and the recommendations made thereon by the Council of the Indies, were steps taken in excess of the customary procedure provided for in the above-mentioned laws relating to the method prescribed for the enactment of new measures or the readjustment of territorial division.

It is enough to refer to its leisurely preparation, extending from 1777 over a period of twenty-five years, the various royal orders calling for reports from the colonial authorities, the successive reports of Requena, the approval of those reports by the President of the Audiencia of Quito and the Viceroy of New Granada and the opinions forwarded by the Council of the Indies after hearing from the Fiscales of Peru and New Spain, to convince one that few other legal measures have been the object of more careful study or the subject of more abundant information.

§II. Execution of the Royal Decree.

The Royal Decree of 1802 was *communicated*, as therein required, to the Viceroys of Peru and New Granada, to the President of the Audiencia of Quito, to the Archbishop of Lima, to the Bishops of Quito and Trujillo and to the Deputy General of the order of San Francisco in the Indies. All *obeyed* it and *carried out* its provisions.

1) **On the Part of the President of Quito: Notifications to the Towns.**—Contrary to Ecuador's claim that the Royal Decree of 1802 was not enforced because of the opposition thereto of the Barón de Carondelet, President of the Audiencia of Quito, it happens that that official was the very one who first complied with the

decree and put it in operation, because of the fact that he was the first to whom it was communicated, he being the immediate superior of the ancient governments of Quijos and Maynas, as shown by the letters of instructions on the subject (D. B. P., No. 37).

Immediately upon its receipt, the President of Quito issues an act of "obedecimiento" (obedience) and refers it to the Fiscal, who reports that the decree must be respected, obeyed and executed, filing a legalized copy with the Audiencia (of Quito) "so that it may be there recorded *that the territories therein specified are segregated from the jurisdiction of its (audiencia) district*, and notice given to the Governors of Maynas and Quijos for their information and compliance." Thus, on the 19th of February, 1803, the President, Barón de Carondelet, conforms, approving the Fiscal's report, which leaves no doubt as to the effectiveness of the Royal Decree of 1802, and which may serve as an answer to those who maintain that the decree did not refer to "territories," or signify an actual segregation in civil, but only in ecclesiastical and military, government.

On the following day Barón de Carondelet communicates the Royal Decree to the Governor of Maynas for his observance, directing the latter thereby to take notice that "His Majesty has been pleased to incorporate that Gobierno (Maynas) and the missions into the Viceroyalty of Peru, detaching them from that of Santa Fe."

The Governor of Maynas, D. Diego Calvo, on the 20th of August, 1803, addressed a circular to the towns, communicating the Royal Decree to them, in their turn, and the local authorities replied to him, using the expression: "I have made known the contents of this royal decision to all the inhabitants of this town under my authority." In September, 1803, the notifications were sent to the Jeberos, Laguna, Chamicuros and Omaguas; in October, to Yurimaguas, Muniches, Chayabitas, Cahuapanas, Barranca, Pinches and Iquitos; in November, to Andoas and Pevas; in December, to Canelos, and, in January of 1804, to San Francisco de Borja and Santiago de las Montañas (D. B. P., No. 37).

2) **On the Part of the Viceroy of Santa Fe.**—The Viceroy of Santa Fe, D. Pedro Mendinueta, says to the Viceroy of Peru, in an official letter of March 29, 1803: "His Majesty having decided upon the *segregation of the province of Maynas* from the jurisdiction of this Viceroyalty and its *aggregation* to that of Peru, and the

Royal Decree making such provision having been submitted to by me and communicated to the Governor of that Province in order that he may *hereafter* be under the orders of your Excellency, I also inform your Excellency of this so that in the knowledge *that your powers over that territory are now established*, your Excellency may make such dispositions in connection therewith as you may deem most appropriate to the service of the King who has confided it to your care" (D. B. P., No. 38). If it were a fact that the Royal Decree of 1802 had needed the "acquiescence" ("*el pase*") of the Viceroy of Santa Fe for its validity, as Ecuador has maintained, what better proof than this that such acquiescence was given?

Mendinueta, in rendering an account to his successor of the state in which he was leaving the Viceroyalty, tells him that the Gobierno of Maynas had been segregated from it and attached to the Viceroyalty of Peru, a disposition he had considered advantageous because the distance made that Gobierno rather inaccessible to the provinces of his Viceroyalty and a burden on its treasury (B. P., p. 123).

3) **On the Part of the Viceroy of Peru.**—Under date of March 14, 1803, the Viceroy of Peru, the Marqués de Avilés, decreed: "His Majesty's Royal Decree having been received, let it be respected and carried into effect," and forthwith issued the appropriate orders for its execution.

Don Diego Calvo, Governor of Maynas, informs the Viceroy, the Marqués de Avilés, in an official letter dated at Jeveros, August 31, 1803, that the Presidency of Quito, having at once complied with the Royal Decree, it had already communicated to him officially the fact that the decree "had been caused to be published throughout the province," a cause for congratulation to that presidency, as it was to himself personally, in being placed under the Viceroy's orders (D. B. P., No. 38).

4) **On the Part of the Ecclesiastical Authorities.**—The Archbishop of Lima, the Bishops of Quito and Trujillo and the Deputy General of the Order of San Francisco, to all of whom the Royal Decree was also communicated, in like manner yielded their obedience to it and carried it into effect.

On obtaining the order of approval from His Holiness in 1803, the new Bishopric of Maynas was established, and, in 1805, Fray Hipólito Sánchez Rangel was appointed Bishop, taking possession

in 1808, through the co-operation of the Viceroy of Peru, the Archbishop of Lima and the Governor of Maynas, in compliance with orders issued to that effect (D. B. P., Nos. 39, 40 and 41).

The Royal Decree was likewise carried into effect, in its relation to the missions, by the turning over of the curacies of Lamas and Moyobamba and that of the convent of Huanuco to the Ocopa College for the Propagation of the Faith and the foundation of hospices in Tarma and Chachapoyas (D. B. P., Nos. 43 and 44).

§III. Confirmations of the Royal Decree.

The Royal Decree of 1802 was confirmed by various royal orders, of which we shall cite three, being refusals to alter it, and, therefore, equivalent to ratifications.

1) **Petition of the Barón de Carondelet; Denied in 1805.**—The year before the enactment of the Royal Decree of Charles IV, while Maynas was still a dependency of the Viceroyalty of Santa Fe, and of the Audiencia of Quito, its President, the Barón de Carondelet, petitioned for the formation of a captaincy-general to embrace all the provinces of that audiencia district, but that petition was denied by the royal order of May 15, 1805, with the concurrence of the Board of Fortifications and Defence of the Indies (D. B. P., Nos. 70, and D. M. P., No. 102).

2) **Petition of Bishop Rangel; Denied in 1818.**—Bishop Rangel, dissatisfied with his diocese because of its great extent, at odds with Governor Calvo and complaining against the Franciscans of Ocopa, petitioned the King, in a letter of September 21, 1811, for the suppression of the Bishopric of Maynas, or at least that great reforms be instituted for the temporal and spiritual development of those regions. As a result, the Council of the Indies started a proceeding, in which the Viceroy of Peru reported, in agreement with the Padre Colomer and the Padre Girbal, with whom he had consulted as the persons most competent in the matter, and D. Francisco Requena submitted an opinion as arbitrator. The Council, in conformity with the recommendations of the arbitrator, reported to the King on the 19th of June, 1818, recommending the preservation of the Bishopric and Comandancia general of Maynas as well as the adoption of certain measures for better government in spiritual and temporal matters. The King decided with

the Council, issuing various royal decrees in 1819 for carrying into effect the recommendations he had approved (D. M. P., Nos. 95 and 97-100; D. B. P., Nos. 72-75).

3) **Petition of President Montes; Denied in 1819.**—Almost coincidentally with the proceeding begun in the Council of the Indies by the letter of Bishop Rangel, a second was instituted before the same body by another petition addressed to the King December 22, 1814, by the President of Quito, D. Toribio Montes, in which he asked for the reincorporation into his district of the Gobierno of Guayaquil and the Comandancia general of Maynas, with which territory the province of Quito would be elevated to the rank of a captaincy-general, like that of Caracas, Chile and others, "fixing for its boundaries the Mayo river on the side of the Popoyán, the whole of the south coast, the settlements and converted territory in Maynas and as far as the desert of Sechura, which is the natural division for forty leagues of unpopulated territory, with Peru and the Viceroyalty of Lima, and selecting Guayaquil as its capital."

Attached to the papers in that proceeding were various objections relative to the jurisdictional dependency of Guayaquil and the location of the capital for the district, and, after several reports, one of which was from Requena, the office of accounts and the Fiscal proposed, in support of that scheme: 1st, that Montes' project to elevate Quito into a captaincy-general be rejected, as had been done with the Barón de Carondolet's plan of like import, and that the dispositions made by the Royal Decree of 1802 as to Maynas be adhered to, and, 2nd, that the Audiencia of Quito should have jurisdiction over matters of justice and finance pertaining to Guayaquil, as was already determined in another proceeding. The Council, on April 29th, 1819, agreed "with the accounting office and the Fiscal," submitted its recommendations to the King, who decreed "*como parece*" (as it appears) and promulgated the appropriate royal decree to carry them into effect (D. B. P., Nos. 70 and 91; D. M. P., No. 102).

We, therefore, see the Royal Decree of 1802 confirmed, on the eve of independence, by the rejection of projects seeking to alter the established organization.

CHAPTER VI.

Gobierno and Comandancia general of Maynas.

(Adherence to and Stability of the Royal Decree of 1802.)

SUMMARY:

- I. Matters arising in Maynas confirming the adherence to the Royal Decree of 1802, down to the Independence.—1. Cessation of the jurisdiction of the Viceroy of Santa Fe and its exercise by that of Peru.—2. Matters ecclesiastical.—3. Matters of personnel, *a*) appointment of governors, *b*) appointment of employees.—4. Matters military.—5. Matters political.—6. Matters economical.—7. Matters administrative.
- II. Particular instances confirming the adherence to the decree in certain localities.—1. Gobierno of Quijos.—2. Town and curacy of Canelos.—3. Missions on the Putumayo.—4. Santiago de las Montañas.—5. Lamas and Moyobamba.
- III. Alleged nullification of the Royal Decree of 1802.—1. No nullifying act whatever in existence.—2. The supposititious protocol of Pedemonte-Mosquera.—3. Court Guides of Spain and Maps.—4. Notes on matters.—5. The constitutional régime of Spain.—6. Independence and war.

§I. Matters Arising in Maynas Confirming the Adherence to the Royal Decree of 1802 Down to the Independence.

1) **Cessation of the Jurisdiction of the Viceroyalty of Santa Fe and Its Exercise by that of Peru.**—The Viceroys of Santa Fe conformed to the recommendations made by D. Pedro Mendinueta, in his aforementioned official letter, to concede to the Viceroy of Peru the power to take charge of the affairs of the Comandancia general of Maynas, abstaining on their part from any intervention therein and inhibiting cognizance of matters then pending, as shown in their decrees of February 5, 1803, and May 29, 1805 (D. B. P., No. 36).

The jurisdiction of the Audiencia of Quito over the territories of Maynas also came to an end as a result of the compliance by its President, Barón de Carondelet, with the royal decree in 1803, and for the same reason his communication with those territories ceased.

for, as he makes clear in his official letter of February 7, 1804, it was no longer possible for Quito to continue in correspondence with Quijos and Maynas "since those provinces *were aggregated* to the Viceroyalty of Peru," and since it was only by chance that anyone came and went between the jurisdictions (D. M. P., vol. VII, p. 212). As further proof of the cessation of that jurisdiction in the Presidents of Quito, it may be remarked that, matters which by their very nature should have continued to be dealt with by that *audiencia*, even such a simple matter as the renewal of a license to the Governor of Quijos, were referred to the Viceroy of Peru (D. M. P., No. 115).

On the other hand, the Viceroys of Peru, as hierarchical superiors, intervened in matters of all kinds pertaining to the Gobierno of Maynas, as we shall now observe.

2) **Matters Ecclesiastical.**—There can be no doubt of the effectiveness of the Royal Decree of 1802 with relation to the Bishopric of Maynas, since that entity continued its existence as created until some considerable time after the independence and Bishop Rangel continued at the head of his diocese until 1821, when he returned to Spain because of the war.

The Viceroy of Peru was the authority who, in the name of the King, maintained civil relations with the Bishopric. The Viceroy and Audiencia of Lima and the Governor of Maynas co-operated in carrying out the orders by which the Bishop took possession (D. B. P., No. 41). To the Viceroy of Peru the monarch confided the execution, with the concurrence of the Archbishop of Lima, of royal orders of general interest to the diocese, such as that of June 17, 1819, providing for the supplying of members of religious orders to the towns of Maynas that might need them (D. B. P., No. 73); and to the Viceroy himself repaired the Bishop of Maynas with his complaints against the civil authorities, as, for instance in 1820, on the occasion of his dispute with the Governor *ad interim* of Quijos (D. B. P., No. 68), which also proves that the year before the independence the jurisdiction of the Viceroy over Quijos continued to be recognized.

Furthermore, the sums required for the maintenance of the diocese, delivered to the Bishop by the Governor and Comandante general of Maynas under orders from the Viceroy, upon whom the Bishop depended, were taken from the treasury of the Viceroyalty of Peru (D. B. P., No. 69).

3) Matters of Personnel.

a) *Appointment of Governors.*—The appointment of the Governor and Comandante general of Maynas rested with the King, who communicated his choice to the Viceroy of Peru, in whom resided the power to fill the office *ad interim*. Thus the Viceroy of Peru, during the vacation of the actual Governor, Don Diego Calvo, names D. Tomás Costa as Governor *pro tempore*, sending him, on June 7, 1809, the appropriate commission, in which authority is given him to act in the four matters of justice, police, finance and war (D. B. P., No. 47). By royal order of October 11, 1809, D. Antonio Rafael Álvarez is named "for the military and political government" of Maynas, and the order is carried out by the Viceroy of Peru on the 21st of March, 1810 (D. B. P., No. 48). Soon afterwards D. José Noriega is named as proprietary governor and notifies the Viceroy of Peru, on June 18, 1813, that he has taken possession of his office (D. M. P., vol. VII, app. 6). On the 21st of October, 1818, on account of the illness of Noriega, the Viceroy of Peru appoints D. Antonio de Simón as Governor *ad interim* (D. B. P., No. 51), and, because of Simón's inability to act, the Viceroy of Peru, May 29, 1819, appoints D. Carlos Herdoíza Governor *ad interim*, to whom, in November of that year, he writes authorizing him to take charge of the office and confiding in his ability and zeal to perform its duties as the needs of the hour required (D. M. P., vol. VII, app. 6).

Will it be possible, after this proof, to deny that "the military and political government" of Maynas, with its fourfold powers above mentioned, *existed* and formed part of the Viceroyalty of Peru until the birth of independence?

b) *Appointment of employees.*—We note further that the Viceroy of Peru appointed the fiscal employees for the Gobierno and Comandancia general of Maynas (D. B. P., No. 63), and that, in the very year 1820, the Viceroy of Lima, D. Joaquín de la Pezuela, appointed D. Enrique Valera chief officer *ad interim* of the treasury of Maynas, and D. Miguel Damián Yepes, treasurer-inspector of the boundary expedition of the Marañón, this latter on the recommendation of the Governor of the Province of Maynas (D. M. P., vol. VII, pp. 232, 233). The Viceroy concerns himself to the extent of appointing the subordinate employees in the Maynas service, as shown in the proceedings of 1817 and 1818 (D. M. P., No. 134).

4) **Matters Military.**—The Viceroy of Peru, on the 14th of July, 1806, orders the Governor of Maynas to organize a company of troops to relieve those detailed from Quito, and on December first notifies them of the nominations he has made for the officers of that company (D. B. P., Nos. 52 and 53). The so-called veteran company of Maynas was at once organized on the same basis as the troops of the royal regiment of Lima, which, as stated by the Viceroy Abascal in his official letter to the Governor of February 8, 1809, enlisted as volunteers, being relieved every two years; and the Viceroys transmit the royal commissions of their officers, or appoint them *ad interim*, as instanced in 1810 and 1811, and award prizes to the soldiers and subalterns of this company, as instanced in 1816 and 1819 (D. B. P., Nos. 54, 55 and 56; D. M. P., vol. VII, pp. 234-240).

The Governor of Maynas, in obedience to the orders of the Viceroy, or acting on his own authority and reporting thereon to the Viceroy, disposes of the troops under his command in the various sections of the territory, some in permanent details to preserve peace among the Indians or to defend the Brazilian frontier and some in flying squadrons, according to the requirements of the moment—for example, the despatching of troops for different reasons into Quito in 1812 and 1817, to the Napo and Pastaza in 1819, and the auxiliaries loaned to Piura in 1818 (D. B. P., Nos. 54 and 57-61). From Lima were shipped the necessary arms, ammunition and military stores (D. B. P., No. 62).

5) **Matters Political.**—By order of the Viceroy of Peru, dated May 17, 1809, the Supreme Central Government Junta of Spain and the Indies, which governed the nation in the name of Ferdinand VII, is proclaimed in Maynas, as it had been in Lima, its installation being celebrated with fiestas and by public rogarion for the release of the King and the triumph of Spanish arms in the war of independence (D. M. P., No. 127).

Frequent instructions were given by the Viceroys of Peru to the Governor of Maynas to prevent the danger of Portuguese incursions, especially in 1808, when the Court of Lisbon removed to Brazil, as well as to maintain peaceful relations with the Brazilian colony, as in the case of the restitution of Portuguese slaves (D. M. P., vol. VII, pp. 247-9).

The Viceroys of Peru maintained continuous correspondence with Maynas in regard to matters of government, as may be observed from various documents from 1804 to 1820 (D. M. P., No. 135).

6) **Matters Economical.**—Not only did the Viceroy of Peru appoint employees in the service of the Maynas treasury but they issued orders affecting the administration of its revenues (D. B. P., No. 64), continuing the taxes which the Indians had to pay, also concerning tax collectors' bonds and the method of collecting those taxes (D. M. P., vol. VII, pp. 244, 245).

The resources of Maynas being insufficient, its expenses were met by funds drawn from the treasuries of Trujillo and other parts of the Viceroyalty (D. B. P., No. 66).

The accounts of the disbursing office of Maynas were examined and audited by the Board of Accounts at Lima, as instanced in the years 1804 to 1819 (D. B. P., No. 65; D. M. P., vol. VII, p. 246).

7) **Matters Administrative.**—By royal decree of October 24, 1807, which makes reference to that of 1802, the Bishop and Comandante general of Maynas are commanded to prepare regulations, mutually satisfactory to them, concerning the personal services of the Indians, which they shall submit to the Viceroy at Lima for provisional approval, and for execution while awaiting final approval. That royal decree is reproduced in that of June 17 1819 (D. B. P., Nos. 71 and 75).

Further evidence of the administrative dependence of Maynas upon the Viceroy of Peru is found in their orders of 1811 to the Governor of Maynas concerning the visits of intendents and the drawing of maps. In the orders of 1812, concerning the obligations on the part of the Indians to lend their services in the carrying of mails; in those of 1816 concerning the traffic in firearms, and in various acts and provisions relating to the municipalities, such as the approval of their charters, their obligation to submit their accounts, and the ruling, in 1818, that service on municipal councils shall not be obligatory on soldiers (D. M. P., vol. VII, pp. 244 and 247-251).

§II. Particular Instances Confirming the Adherence to the Decree in Certain Localities.

The effectiveness of the Royal Decree of 1802 having been demonstrated insofar as it deals with the maintenance and functions of the Gobierno and Comandancia general of Maynas (which it constituted and attached as a dependency to the Viceroy of

Peru), let us prove its efficacy and vigor by the special method of citing instances arising in certain districts of the Gobierno and Comandancia general, particularly in those districts which it has been claimed were not embraced therein.

1) **Gobierno of Quijos.**—The ancient Gobierno of Quijos, which had been a dependency of the President of Quito, passed into dependency upon the Governor and Comandante general of Maynas and the Viceroy of Peru by virtue of the Royal Decree.

On the 8th of August, 1805, the Governor of Quijos, D. Diego Melo de Portugal, petitions the Viceroy of Peru for leave of absence on account of illness, which the Viceroy of Peru grants on the 22nd of September and renews on the 14th of March, 1806, on the particular recommendation of the President of Quito, the Barón de Carondolet, dated February 7th (D. M. P., No. 115).

On the same date, March 14, 1806, the Viceroy of Peru names D. Juan Melo de Portugal as Deputy Governor of Quijos, placing him in charge of the government of the province and the collection of taxes during the absence of his father (D. M. P., No. 115; D. B. P., No. 45).

On the 6th of October, 1808, the Viceroy of Peru, in execution of a judgment of the Audiencia of Lima, removes from office as Deputy Governors of Quijos and Iquitos, respectively, D. Juan Melo and D. Narciso Melo (D. B. P., No. 46).

In order to put down the disorders prevailing in the province of Quijos resulting from the absence of the proprietary Governor, D. Diego Melo de Portugal, and the maladministration of the Governor *ad interim*, D. Juan Naves, reported by the Governor of Maynas in the proceedings taken arising therein, the Viceroy of Peru confides the government of Quijos *ad interim* to D. Manuel Fernández, Captain of the veteran company on December 23, 1811 (D. B. P., No. 49; D. M. P., No. 116).

The Viceroy of Peru, after rejecting a proposal from the Governor General of Maynas to appoint a new governor for Quijos, complies with a later suggestion from the Governor General, and, on the 12th of July, 1816, names for this charge D. Rudesindo del Castillo (D. B. P., No. 50; D. M. P., vol. VII, app. 5).

The subordination of Quijos in economical and administrative matters is no less evident than in the question of appointments. The Governors of Quijos collect the taxes and make disbursements rendering account thereof to the authorities at Lima (D. M. P., Nos. 110 and 111). Because of the failure of the Governor of

Quijos to pay the salary of the parish priest at Ávila, the latter repairs to the Governor of Maynas with his complaint (D. M. P., vol. VII, app. 5). The Viceroy of Peru orders the Governor of Quijos to supply the Indians of his district with the requisite implements for repairing the roads (D. M. P., No. 112). The Governor of Maynas despatches troops to aid in the collection of taxes from the Indians and to punish their delinquency, as instanced in 1817 and 1819 (D. B. P., Nos. 59 and 61; D. M. P., vol. VII, app. 5); and, in the same year, 1819, the Viceroy of Peru grants to the Governor of Quijos the authority to undertake the discovery and pacification of unchristianized Indians, as to which undertaking the latter reports to the Governor of Maynas from Napo on the 13th of September (D. M. P., vol. VII, app. 5).

2) **Town and Curacy of Canelos.**—By order of the Governor-General of Maynas the Royal Decree of 1802 was proclaimed to the inhabitants of Canelos December 5, 1803 (D. B. P., No. 37). Bishop Rangel appointed the parish priests and made his pastoral visit (D. B. P., Nos. 67 and 77).

Most interesting is the *memorial* addressed to the King on October 8th, 1814, by Fray Antonio José Prieto, missionary priest and civil authority at Canelos, representing that the Bishop had persecuted him unjustly and laying stress on the services its author had rendered His Majesty at the time of the insurrection at Quito, and giving notice of his memorial to the Viceroy at Lima and the Governor of Maynas. "All this," he says, "is particularly set forth in the papers in my case, as shown by the enclosed report of the Señor Governor of Quijos, to whose jurisdiction belongs the town of Canelos" (D. M. P., No. 124).

3) **Missions on the Putumayo.**—As we have heretofore seen, the Putumayo missions extend along on both sides of this river from its source, where the *upper* missions begin and are known as the Sucumbios, as far as the Portuguese frontier (before the river empties into the Amazonas), at which point the *lower* missions terminate.

The Comandante of Putumayo, D. Santiago Apolinar de Betancur, writing from the town of that name, on April 30, 1804, reported to the Comandante general of Maynas that he had made known to the people of that section the contents of the Royal Decree respecting the separation of that province and its attachment to the Viceroyalty of Lima (D. M. P., No. 135, p. 317).

Occasionally the local authorities of the province of Quito placed

difficulties in the way of the authorities of the upper part of the Putumayo province and it became necessary to invoke the Royal Decree of 1802. In this connection it is interesting to read the official letter which, the President of Quito, D. Toribio Montes, addressed on the 22nd of June, 1816, to the Governor-General of Maynas, telling him that, "in conformity with His Majesty's regulations, and on consideration of the complaints addressed to me by the Lieutenant of Aguarico, D. Manuel Velasco, I have instructed the Lieutenant-Governor of the city of Pasto that, in prompt compliance with the said Royal Decree, Velasco be left free in the exercise of his instructions" (D. B. P., No. 81).

The dependency of the upper and lower missions of the Putumayo on the Viceroyalty of Peru and Comandancia general of Maynas is fully established.

In 1803 and 1805 the Governor of Maynas requests the Viceroy at Lima to send members of religious orders to the upper and lower missions for the purpose of developing its population by putting an end to the Indians' custom of abandoning the settlements and retiring to their former habitations in the depths of the forests. In 1808 this same Governor announces the visit of the Bishop and exhorts the people to put the roads in condition and give him the proper reception (D. M. P., vol. VII, pp. 213, 214).

The incursions of the Portuguese, who would follow up the course of the Putumayo, and, breaking in upon the missions, capture the Indians, seize the crops and take possession of lands, were the source of constant worry and the subject of continual communications by the Lieutenants of Putumayo with the Governors of Maynas and the Viceroys of Peru (D. M. P., No. 106; id. vol. VII, pp. 215-225).

By order of the Governors of Maynas, census or tax lists were made up of tax-paying Indians of the upper and lower Putumayo missions, as was done with respect to the towns of Sucumbios and Aguarica in 1813, and Yaguas, Santa María and Ticunas in 1819 (D. M. P., Nos. 108 and 109).

The expenses of the military post on the Putumayo were charged against the treasury of Maynas and were ordered and approved by the Governor-General, as shown by vouchers of 1804 to 1821 (D. M. P., No. 107).

4) **Santiago de las Montañas.**—The Royal Decree of 1802 was communicated to the inhabitants of Santiago de las Montañas Feb-

ruary 10, 1804 (D. B. P., No. 37); and, in obedience thereto, that circumscription was left under the jurisdiction of the Maynas authorities, as indicated by the matter of the collection of taxes, which was made under orders of the Governor-General, who directed the drawing up of the Indian tax lists and examined into and prescribed the operation of the treasury of Maynas with respect to the collection, receipt and disbursement of funds and public sales of the gold bullion with which the Indians made their payments, as shown by vouchers from 1807 to 1821 (D. M. P., Nos. 120 and 121).

The Governor of Maynas also prescribed measures, as in 1816, by which the uncivilized Indians who had then recently established themselves in the vicinity of Santiago de las Montañas, on the borders of the river, were treated with gentleness and forbearance to the end that they might be attracted and civilized (D. M. P., No. 122).

5) **Lamas and Moyobamba.**—By virtue of the Royal Decree of 1802, the territories of Lamas and Moyobamba, which had always belonged to the Viceroyalty of Peru, pertaining to the ancient province of Chachapoyas, became a part of the Gobierno and Comandancia general of Maynas, not, however, without some resistance on the part of the Intendent of Trujillo, which required an express order of the Viceroy of Lima to overcome (D. B. P., No. 44). In 1808 the Governor of Maynas appeared to be in full exercise of his authority over those territories, as will be seen from the measure he enacted in compliance with the orders of the Viceroy at Lima, for the amelioration of the condition of the Indians and suppression of the abuses under which they suffered (D. M. P., No. 119).

§III. Alleged Nullification of the Royal Decree of 1802.

1) **No Nullifying Act Whatever in Existence.**—The Republic of Ecuador, which at first denied the existence of the Royal Decree of 1802, then its validity, and later its enforcement and observance, as a last resort took refuge in the pretence that it had been annulled, making use of every sort of argument but the one only that could be of any effect: the production of the text of any act of the Spanish sovereign annulling that decree.

There is no such act of nullification. If one did exist, clearly

the burden of proof rests upon Ecuador. It is more than enough for the defence of Peru that she has demonstrated that the Royal Decree of 1802, not only had a legal existence, but that it was enforced and confirmed. Let us see, however, what are the arguments advanced to sustain this claim of annulment.

2) **The Supposititious Pedemonte-Mosquera Protocol.**—The supporters of Ecuador coincide in affirming that the Royal Decree of 1802 was annulled, *as established*, they say, by the Pedemonte-Mosquera protocol of 1830. Some of them content themselves with that affirmation, while others base upon it their further arguments.

Very well, then. Neither has *that protocol* ever existed, as we shall show in a most convincing manner when we take it up in its appropriate place in this work. Nor does the minute or draft which they attempt to clothe with such character warrant the assumption that the annulment may be considered *as proven*.

It is alleged that on the 11th day of August, 1830, a conference in relation to the boundary question was held at Lima between the Minister of Foreign Affairs of Peru, Sr. Pedemonte, and the Plenipotentiary of Colombia, General Mosquera, who, on the 24th of July, had thrown up his office as plenipotentiary, and on the 10th of August was sailing in the direction of his own country. And that is the conference in which, it is said, General Mosquera stated that the Royal Decree of 1802 "was modified" (without explaining how or when), that "Maynas and Jaén were dependencies of the Viceroyalty" (which?) "in 1807, when the Bishopric of Caquetá, or Yapurá, and Andaquíes was being organized"; that "the province of Jaén de Bracamoros and Maynas returned to the possession of the new Kingdom of Granada, and in the Court Guide of Spain" (an official government directory and guide published annually) "for the year 1822, that province is found to be attached to the Viceroyalty of the new Kingdom" (D. M. P., No. 26).

How, from these unskillfully drawn sentences, can proof of the annulment of the Royal Decree of 1802 be deduced? At all events, it would be but the mere interpretation of Mosquera, who, as we shall see from his letter to Bolívar, was convinced of the vitality of that decree and of the obstacles he would have to meet in the negotiations if Peru should invoke it. Solely for the purposes of his defence of Colombia's pretensions, he had recourse to the argument, for what it might be worth, that the Bishopric of Caquetá was organized within that of Maynas, suggesting thereby that the Royal

Decree was merely *ecclesiastical* in character and proffered the Court Guide of Spain as proof of its nullification.

3). **Court Guide of Spain and Maps.**—We confess that we have not read the *Court Guides* of that epoch; but sufficient to enable us to form a conclusion is that which is said of them by the defenders of Ecuador, who have seized upon this point of Mosquera's with much enthusiasm.

In the Spanish Court Guide for the year 1804 the Gobierno and Comandancia general of Maynas appears as embraced within the Viceroyalty of Peru. It continued to be so represented in the Guides for the year following, up to 1819, when it figured in both Viceroyalties—in that of Lima and that of Santa Fe. In the Guide for 1820, as well as in that for 1822, cited by Mosquera, in designating the captaincies-general and military governors of the provinces, army posts and fortified towns beyond the sea, it says: "*New Kingdom of Granada: Maynas*, Lieutenant-Colonel D. Joseph Rafael Caraveo," but locates the fortified city of Guayaquil in the Viceroyalty of Peru.

If the Court Guides were to constitute full proof and the question of boundaries were to be decided in accordance with the principle of *uti possidetis* of 1810, there would be no doubt, then, according to this course of argument, that Maynas belonged to Peru. And, having adopted the *uti possidetis* from the moment of emancipation, Colombia, which was born and proclaimed her independence in 1819, would have been able to dispute with Peru the possession of Maynas, according to the Guide of that year; but not Guayaquil, which then, as in 1820, when it was emancipated, figured in the Viceroyalty of Lima.

But the Court Guides, although called "official" and made up in the government departments, do not always conform to the facts. Their accuracy depends on the exactness with which the clerks edit the notes in the light of their knowledge of the antecedents of their preparation. The possibility of error is easily apparent, dealing, as the guide does, with a colonial government of such vast extent, so far off, unsettled by insurrection, and at times in revolt against the respective central governments.

Be that as it may, the guides never possessed sufficient authoritative force to invalidate official documents such as go to establish the validity of the Royal Decree of 1802 and its enforcement during the period preceding the cessation of the Spanish régime in those regions.

And the same may be said of the *maps* and geographical writings. When, on the 9th of March, 1858, the Plenipotentiary of Peru replied to the Government of Ecuador, he stated most properly: "In a conflict of authority between a regularly enacted law as to boundary lines and the narration of a geographer, however learned the latter may be, there can be no doubt, under the most ordinary rules of criticism, as to which should be preferred. A traveler—a geographer—may accumulate data which is inexact, and, being copied by one after another, the existence of *certain sovereign enactments* concerning boundaries would be overlooked. If, however, the *law* is valid and efficacious, as is the Royal Decree of 1802, what would the data and descriptions of all the geographers in the world amount to? Humboldt, even the great Humboldt, erred in his designation of the boundaries between New Granada and Brazil, as held unanimously by the neo-Granadan Congress" (D. B. P., vol. I, p. 119).

4) **Notes on Matters.**—The defenders of Ecuador cite various incidents, taken chiefly from the work of Vacas Galindo, to prove that the Presidency of Quito intervened, subsequently to the Royal Decree of 1802, in matters pertaining to the Government of Maynas. It would be necessary for one to have more detailed information as to these cases in order to determine intelligently the circumstances of each; but it is not strange to us that certain petitions should emanate from the Presidency of Quito, or that assistance in men and moneys should be sent during the war, or that it should co-operate in other ways with the government exercised by the Viceroy of Peru over these territories, for it was just and proper, in those trying times of insurrection, that those in power should aid each other, and even that the President of Quito himself should find himself under the orders of the Viceroy of Lima, as the direct representative of the Spanish sovereign, at a time when the Viceroy of Santa Fe, deprived of authority and power by the emancipation of New Granada, could do nothing.

In accordance with the Royal Decree of 1802 the Gobierno and Comandancia general of Maynas depended in its entirety upon the Viceroy of Peru, and, by virtue of that decree, appointed the governors, gave them their orders and decided matters as the superior authority, whatever may have emanated from the Presidents of Quito in the way of assistance or intervention. We have already seen that one of them, D. Toribio Montes, asked for the annulment of the royal decree, and that in consequence its reconfirmation in

1819 became necessary. We have shown also that Maynas was continuing in its dependency on the Viceroy of Peru as late as 1820.

None of the documents alluded to as proof of the intervention or mediation of the Presidents of Quito in the affairs of Maynas amounts to a nullification of the Royal Decree of 1802, nor does a single one of them show that the Viceroy of Peru had ceased to be the superior authority over Maynas.

5). **The Constitutional System of Spain.**—One of the supporters of Ecuador insists that, beyond question, part of the Royal Decree of 1802, by which the protection and temporal government of the missions was entrusted to the Governor of Maynas, “was expressly revoked by the Constitution of 1812 and the act of the Cortes” (the Legislature of Spain) “of June 23, 1813”; and, in support of that contention, he argues as follows:

Articles 324 and 325 of the Constitution of 1812 placed at the head of each province two authorities: a governor, called the *jefe politico*,* and a provincial council (*Diputación provincial*). Article 335, Section 10, charged the provincial councils *de Ultramar* (beyond the seas) “to look after the material welfare, good order and advancement of the missions for the conversion of the infidel Indians.” In conformity with that injunction in Article 16 of Chapter II of the act of the Cortes of June 23, 1813, dealing with provincial organization, it was prescribed that “the Diputaciones de Ultramar shall see to it that the inhabitants scattered throughout the valleys and mountains shall be concentrated in the towns. * * *” And as the Royal Decree of 1802 conferred on the *Governor of Maynas* the temporal government of the missions, that decree was annulled by those enactments of the Cortes at Cádiz by which the government was entrusted to the provincial councils.

The writer states that, by the repeal of those provisions in 1814, the Royal Decree was revived, but that when, in 1820, they were re-enacted under the constitutional régime, the Royal Decree was thereby again annulled. A proof of this, he adds, is the royal order of January 11, 1821, issued in response to the petition of a canon and resident of Quito, “ordering the *Jefe politico* of Quito to devote his attention to the missions established in the territory under his command, giving heed to the Provincial Council and the Bishop.”

From all of which it may be gathered that, the jurisdiction of the Viceroy of Peru having come to an end in the time of Fer-

dinand VII, the politico-economic government of the missions established on both shores of the Marañón returned to dependency upon the province of Quito.

It will at once be observed that, instead of offering the *text* of any provision by which the Royal Decree of 1802 is annulled, or by which the territorial circumscription therein created is abolished, "an argument" is submitted—an argument, too, based upon measures signifying nothing of the kind. The enactment that there should be a council in each province, and that those beyond the sea should perform the duty of bringing about the conversion and advancement of the Indians, does not mean that a council could not be established in the province of Maynas, or that its Governor should cease to intervene in the temporal government of the missions, either as jefe politico or as president of that corporation, and, much less, that, by virtue of such measures, the territorial division should be altered, withdrawing from the Viceroyalty of Peru the province of Maynas and giving it to the Viceroyalty of Santa Fe.

Nor does the royal order of January 11, 1821, prove anything in this connection. The petitioners asked that there be created in Quito, with funds emanating from the Jesuits, a college of missionaries, for the propagation of the faith in various territories specified, including a part of Maynas. Desiring to favor the missions, and particularly those in the provinces beyond the seas, for the purpose of "providing them with a sufficient number of evangelical workers and furnishing them with all the protection they needed," His Majesty, the King, ordered that the jefe politico of Quito "should devote his entire attention to the management of *those existing* in the district under his command." That royal order responds to necessities of a purely religious character and does not specify which were the missions embraced in the province of Quito.

It does not result, therefore, that the Royal Decree of 1802 was annulled by those proceedings, or by the measures of a general nature enacted during the first two periods of the constitutional régime of Spain.

6) **The Independence and War.**—According to other defenders of Ecuador, the Royal Decree of 1802 *was annulled*: "first, by the *only power competent* effectively to accomplish it, that is, by the *successor* of the King of Spain in the exercise of sovereign power,

to wit, *the town of Quito*, by virtue of the act of independence; and, later, by Colombia, by virtue of the right of a *conqueror* in war."

It is true that the fact of *independence* of the colonies annuls the colonial law, provided the emancipated peoples do not accept it voluntarily; and it is also true that in the exercise of their sovereignty, which was not acquired by inheritance from the King of Spain but by force of the act of emancipation itself, those peoples could conform or not to the Royal Decree of 1802, preserving or modifying, as they pleased, the organization therein established; but it was not in the *town of Quito* that the power resided to confirm or annul the Royal Decree, nor was it annulled by the fact of Quito's independence.

The inhabitants of the town of Quito did not rise against Spain in 1809, but against Joseph Bonaparte and in favor of Ferdinand VII, or in 1810, when they sought to organize in direct dependency on the Council of Regency of the mother country. That condition of affairs, however, was brought to an end in the year 1812 by the action of the Viceroy of Peru, D. José de Abascal, and of the new President, D. Toribio Montes, called El Pacificador, and, subsequently, with no embarrassment whatever, the province of Quito continued in submission to the Spanish authorities until after the battle of Pichincha in 1822, by virtue of which, through the victory of the combined armies of Colombia and Peru, it was emancipated and united itself to Colombia, but without taking with it the province of Maynas, which remained a part of Peru. How could Quito have annulled the Royal Decree of 1802 when it did not emancipate itself by its own efforts or make any disposition of Maynas? Also, and even considering that province as the successor of the King of Spain, how could it invoke the royal decree creating the Audencia of Quito, and yet refuse to recognize the authority of the sovereign rule subsequently to enact the decree of 1802?

The people who could have annulled the decree were those of *Maynas*, but they did not do so. In Maynas the insurrections of the Indians in 1809 were organized against the abuses growing out of conflict between the civil and ecclesiastical authorities; the disorders in Quijos in the year 1810 did not assume the character of rebellion, and those of 1811 were suppressed by the royalist troops despatched to the Napo river under the command of Lieutenant Governor Fernández Alvarez, Captain of the Veteran Company of Maynas. All this Peru has proven by documents, which also show the dependence

of those territories on the Viceroy of Lima. The province of Maynas emancipated itself in conjunction with Peru, swearing the independence in common in 1821 and continuing with her down to the present day (D. M. P., vol. 1, pp. 127-138, and documents cited).

As to the annulment of the Royal Decree of 1802, by virtue of the fact of Colombia's conquest of Peru, we shall take up that question when we come to examine into the treaty of 1829. It is enough for the present to say that that treaty, which put an end to the war, confirmed each party in the possession of its respective territory. No mention was made of the Royal Decree of 1802, nor was the devolution of Maynas spoken of, but, on the contrary, the principle of *uti possidetis* "before the independence" was accepted.

From the foregoing it is clear that there has been no act of annulment of the Royal Decree of 1802 and the lack of convincing force in the effort to show that there was such an act is manifest from the character of the arguments resorted to.

CHAPTER VII.

Gobierno of Jaén.

SUMMARY:

- I. The province of Jaén, in the Viceroyalty of Peru.—1. Conquest of the Bracamoros; founding of Jaén.—2. Gobierno of Yaquarsongo and Pacamoros.—3. Creation of the Audiencia of Quito.—4. The Corregimiento of Yaquarsongo and the Gobierno of Jaén de Bracamoros.—5. The province of Jaén, belonging to the Bishopric of Trujillo, Vicepatronate of the Viceroy of Lima.
- II. Creation of the Viceroyalty of New Granada; proceedings for the reincorporation of the province of Jaén into the Viceroyalty of Peru.—1. Report of the Director-General of Tobaccos, 1766.—2. Royal order of June 1, 1784, authorizing the reincorporation.—3. Reports from 1788 to 1792.
- III. Towns in the Gobierno of Jaén.
- IV. Boundaries of the province of Jaén.

§I. The Province of Jaén in the Viceroyalty of Peru.

1) **Conquest of the Bracamoros; Founding of Jaén.**—In 1538 Captain Pedro Vergara began the discovery and conquest of Pacamoros, or the country of the Bracamoros. In 1542, after routing the son of Almagro at Chupas, the President and Governor of Lima, Vaca de Castro, sent Vergara to pursue his conquests in Bracamoros, entering by way of Piura, also Captain Juan Porcel, who was to enter through Chachapoyas. A report made at the instance of Gaspar Hernández Marino, who accompanied Porcel, sets forth the services rendered by those captains in the regions mentioned. They founded Nuevo Jerez de la Frontera and certain other towns, from whence, in 1547, they hastened, at the call of the President and Governor, D. Pedro la Gasca, to engage Gonzalo Pizarro, who was routed at Jaquijaguana (D. M. P., Nos. 138, 139).

Don Pedro de Gasca entrusted the entrance of the Bracamoros country, which had been held by Porcel, to Diego Palomino, who founded Jaén, as reported by that President, in his letter of September 21, 1549, to the Council of the Indies (D. M. P., No. 140).

2) **Gobierno of Yaguarsongo and Pacamoros.**—On the 10th of November, 1556, the Viceroy of Peru, the Marqués de Cañete, confided the entrance to Bracamoros to Juan Salinas, with the title of Governor and Captain-General of Yaguarsongo and Pacamoros, giving him authority to extend the discovery for twenty leagues of territory towards the north from Zamora, without prejudice to the boundaries of the cities of Jaén and Santiago de los Valles (D. M. P., No. 142).

In an account of his labors, written in 1565, Salinas sets forth the services he had rendered in Peru during the period of thirty years, fighting under the orders of Presidents Vaca de Castro and La Gasca, against the rebels, in extending the domain of the King in Bracamoros and Yaguarsongo, and in repopling the cities then existing and founding others, such as Valladolid, Santiago de las Montañas, Loyola and Santa María de Nieva (D. M. P., No. 141).

As a reward for those services, he was confirmed in his government and conquest of the provinces of Yaguarsongo and Bracamoros during his own life and the life of his son, who was designated as his successor by royal decree of May 7, 1571; the King afterwards, in 1578, conferred on him the rank of *Adelantado* (governor of a province). (D. M. P., No. 142.)

3) **Creation of the Audiencia of Quito.**—During the government of Salinas the Audiencia of Quito was created by royal decree of Philip II in 1563, expressly including the towns of Jaén, Valladolid, Zamora, etc. (Law 10, Title 15, Book II); and in this way the government passed from the jurisdiction of the Audiencia of Lima to that of Quito, although continuing under the Viceroys of Peru, on whom the latter audiencia also depended.

About that time the demarcation formerly made of the audiencias was reviewed, as shown by the communication addressed on the 26th of April, 1565, by the licenciado Castro, Governor of Peru and President of the Audiencia of Lima, to the Council of the Indies, in which he said: "Also, in the partition of the districts between this Audiencia and that of Quito, they did not deal fairly with your Lordships in leaving the city of Jaén in the district of the Audiencia of Quito, because it is closer, by more than thirty leagues, to this city (Lima) than the port of Payta, which remained as a district of this city and is nearer this city than to Quito" (D. M. P., No. 144).

4) **The Corregimiento of Yaguarsongo and the Gobierno of Jaén de Bracamoros.**—Because of the death at an early age of the son of D. Juan Salinas, the government he exercised over Yaguarsongo and Pacamoros passed into the hands of D. Juan Alderete and D. Alonso de Vilanova, whom we find making appointments of subordinates in 1582 and 1585 (D. M. P., No. 143). Later that government was abolished and restricted to that of the mere Corregimiento of Yaguarsongo, distinct from that of Jaén.

In 1617, in conformity with the report of the Viceroy of Peru, the Prince de Esquilache, the Corregimiento of Yaguarsongo was abolished, the settlements of Valladolid and Loyola (Cumbinama) were attached to the Corregimiento of Loja and those of Nieva and Santiago de las Montañas to that of Jaén (D. M. P., No. 145).

On the 29th of March, 1623, the rank and title of Governor of Jaén de Bracamoros was established for the first time, to designate the command over the united districts of Santa María de Nieva and Santiago de las Montañas. To that charge Philip IV appointed D. Pedro Castillo Velasco, with civil and criminal jurisdiction and the authority to designate lieutenants (D. M. P., No. 146).

In 1627 that governor submitted to the King certain memorials in which he complained that the Corregidor of Chillaos was collecting taxes in Pimpincos, a town in his jurisdiction, because it was five leagues within the territory of Jaén, and proposing also certain measures for the exploitation of the mines of Chirinos, which likewise were within the confines of Jaén, and for the pacification of the savage tribes of Indians. The Council of the Indies conformed to the request in the Pimpincos matter, and, as to the others, agreed that the Viceroy should be authorized to provide the means to the ends desired, transmitting, with its reply, the requisite royal order (D. M. P., No. 147).

The *Compilation of the Indies*, published in 1680, in Law 1, Title 2, Book V, relating to the creating of offices, mentions the Gobierno of Jaén de Bracamoros, which continued to figure as such.

5) **The Province of Jaén, Belonging to the Bishopric of Trujillo; Vicepatronate of the Viceroys of Lima.**—On the creation of the Bishopric of Quito in 1545, and in conformity with the demarcation made in 1543, "the entrance and settlements of the Bracamoros" were embraced therein (D. M. P., Nos. 62, 63).

The creation of the Bishopric of Trujillo being authorized in

1577, its diocese was made up, under the authority of the royal decree of 1611, of a considerable portion taken from the Bishopric of Lima and a smaller part from that of Quito; included in the new Bishopric was all the territory of Piura and the entire province of Jaén (D. M. P., No. 64).

From this resulted serious conflicts in the exercise of the royal patronage with respect to the presentations of the curacies of the Gobierno of Jaén, the perquisite being claimed, as vicepatronate by the President of Quito, on whom the Gobierno depended in temporal matters, and by the Viceroy of Peru, who exercised the right in the other parishes, and who regarded himself as the real representative of the royal prerogative.

Not only did the diocesan administration suffer by those conflicts but it was further embarrassed by the annoyances and delays in the repair of 230 leagues of rugged and uneven roadways from the city of Quito to that of Trujillo, which was only eighty leagues from Lima, over level and much frequented roads (D. M. P., No. 149).

For reparation of such evils, the Bishop and Chapter of Trujillo appealed to the Prince de Esquilache, Viceroy of Peru, who, on the 23d of March, 1621, decreed, in the name of His Majesty, that all presentations of benefices and curacies in the Bishopric of Trujillo should be made by the Gobierno and Audiencia of Lima, in spite of the fact that they were outside of the district of that government (D. M. P., No. 149).

Subsequently the Bishop of Trujillo besought the King to confirm the action by royal decree, but, in 1622, the Council of the Indies resolved that the President and the Audiencia of Quito should submit a report, and the matter was thus brought to a standstill (D. M. P., No. 149).

After renewed efforts on the part of the Bishop of Trujillo through different channels, and on the recommendation of the Council of the Indies, two royal decrees were issued on the 13th of December, 1679, conceding to the Viceroy of Peru the royal vicepatronate over the entire Bishopric of Trujillo, and, consequently, over the province of Jaén; and the Bishop of Trujillo and the President of the Audiencia of Quito were so advised (D. M. P. No. 150).

§II. Creation of the Viceroyalty of New Granada; Proceedings for the Reincorporation of the Province of Jaén into the Viceroyalty of Peru.

The Viceroyalty of Santa Fe, created in 1717, was extinguished six years later. On its re-establishment in 1739, the Audiencia of Quito passed into dependency thereon along with the Gobierno of Jaén, which in temporal matters was immediately subordinated to that Audiencia.

But enclosed as was the province of Jaén within the provinces remaining in the Viceroyalty of Peru, such as Piura, Cajamarca and Chachapoyas, the reasons bearing weight in connection with its separation from Quito in spiritual affairs were even more apparent in their application to affairs temporal; nevertheless, to the great prejudice of its material interests, the ties that bound the province to Lima were severed, in consequence of the creation of the Viceroyalty of Santa Fe.

For that reason various proceedings were initiated, looking to the restoration of the government of the province of Jaén to the Viceroyalty of Peru.

1) Report of the Director-General of Tobaccos in 1776.—On the establishment in Peru of the system for the collection of the tax on tobacco, the government of Jaén was directed to expedite the service in connection with its production and purchase in that province. The Governor, however, declined to act, taking the ground that he had received no orders to that effect from Santa Fe, and that the inhabitants were opposed to the service; whereupon, after setting forth, in his report of June 3, 1766, that the inhabitants were desirous of cultivating tobacco and selling it to the Treasury, and that their own governor had offered to remit for their account 20,000 bundles, the Director-General of Tobaccos proposed that the province of Jaén be attached to the Viceroyalty of Lima, because of the fact that the principal trade relations and easiest means of communication of the province of Jaén were with the provinces of that Viceroyalty.

To that proposal the Fiscal consented, adding that, by that means, success would also be assured in the collections in Santa Cruzada, which theretofore had been attended by the greatest difficulties.

The Viceroy of Peru decreed that the record in the case be re-

ferred to the Royal Junta of the Revenues from Tobacco (D. M. P., No. 151).

2) **Royal Order of June 1, 1784, Authorizing the Reincorporation.**—The Inspector-General of Peru, D. Jorge Escobedo, also suggested in 1738 to the Minister D. José Gálvez the advantage to be gained by restoring the province to the Viceroyalty, arguing that, since it had been separated from the Viceroyalty as to temporal matters while still united in affairs spiritual, great injury had resulted to its inhabitants and commerce, besides the increase in the difficulties of promoting the tax on tobacco.

Minister Gálvez replied with a royal order on the 1st of June, 1784, as follows: "As to the incorporation of the province of Jaén de Bracamoros into this Viceroyalty, I communicate this day to the Archbishop-Viceroy of Santa Fe the appropriate order whereby, in view of what your Lordship has proposed, and the same offering no objections, *he may be notified of and conform to the projected reunion to said Viceroyalty*, to the end that the difficulties resulting from the separation heretofore made may be avoided" (D. M. P., No. 152).

3) **Reports from 1788 to 1792.**—In 1788, by direction of the Viceroy of Peru, the officer in charge of the treasury, D. José Gonzalo del Campo, made an extensive report concerning "the advantage that would result to the State and to the revenues from the incorporation into this Viceroyalty of the province of Jaén de Bracamoros."

The arguments on which he chiefly depended in support of such incorporation were:

1st. The geographical situation of Jaén, enclosed, as it is, within the limits of the Viceroyalty of Lima, for its area occupys almost the center between the districts of Piura, Cajamarca and Chachapoyas.

2d. The difficulties in communicating with the provinces of Loja and Cuenca, of the Viceroyalty of Santa Fe, whereon that of Jaén borders along a line of almost impenetrable mountains, the difficulties being so great that it is necessary to pass through the entire mountain ridge in the district of Piura in order to reach them.

3d. The depopulation of Jaén since its attachment to Santa Fe; from a population of 30,000 inhabitants at the beginning of the XVIIIth century it was reduced to scarcely 7,000 in the year 1780.

4th. The benefits that would result to the public revenues from such incorporation, especially from the tax on tobacco.

5th. The great advantages its inhabitants would acquire in securing attention to their complaints and in the promotion of agriculture, industries and commerce, by dependency on Lima.

Later, the Director-General of Tobaccos, D. Miguel de Otermín, was heard on the subject. He said that the uniting of the province of Jaén to the Viceroyalty of Lima was a matter as to which "the King had already vouchsafed his sovereign opinion in the royal order of June 1, 1784," and that the conformity in jurisdictions, the better administration of the revenues and the rights of the inhabitants counseled the union of the political government of that province with the Viceroyalty of Peru, to which it was already united in spiritual government.

A legalized copy of the royal order cited was attached to the papers in the proceeding, which terminated in the recommendation of the Fiscal, in 1790, that it be referred to the Viceroy of Lima, so that, in view of that royal order, he might be advised of the advantages and enabled to make effective representations to His Majesty (D. M. P., No. 153).

Therefore, even if the reincorporation of the political government of Jaén in the Viceroyalty were not an accomplished fact, the royal authority to reincorporate had been given, and the advantage of the step had been recognized as well for the general interests of the State as for the inhabitants of that province, which, in religious interests, already depended on Lima.

§III. Towns of the Gobierno of Jaén.

According to the description of the Kingdom of Quito in the XVIIIth century, written by D. Juan Romualdo Navarro, Associate Judge of the Audiencia, the government of Jaén was composed of four cities: Jaén, Valladolid, Loyola and Santiago de las Montañas, and eighteen towns: Palanda, Chunchi, Chito, Simanchi, San José, Sondor, Todos Santos, Charape, Perico, Gamalotes, Nambasaca, Chinchipe, Chirinos, Pomaca, Santiago de Forocos, San Lucas de Pucara, Tomependa and Chuchunga. The last-named town, he says, is Jaén's port on the Marañón, for, although that city is situated on its shore, the river is only navigable from Chuchunga, distant a scant four days by road (D. M. P., No. 154).

We have already said that when the Corregimiento of Yaguarsongo was abolished in 1617, Nieva and Santiago de las Montañas were attached to Jaén, and Valladolid and Loyola to Loja (D. M.

P., No. 145); that the Governor of Jaén, D. Pedro Castillo Velasco, in his memorials to the King in 1627, made it known that Pimpincos and Chirinos were within his jurisdiction (D. M. P., No. 147).

In the relation sent to His Majesty, also in 1627, by the Bishop of Trujillo, concerning the curacies and benefices of his diocese, the priests of that city and of Tomependa, Chirinos, Salique and Pucara, figured in the Jaén district (D. M. P., No. 148).

In the description of the Audiencia of Quito made by its President, the Marqués de Selva Alegre, in 1754, the author says that the Gobierno of Jaén embraces in its jurisdiction the city of that name and the ten towns: San José, Chito, Sondor, Charape, Pucara, Chinchipe, Chirinos, Pomaca, Tomependa and Chuchunga (D. M. P., No. 28).

In the relation concerning the parishes of Jaén with which D. Gonzalo del Campo accompanied his abovementioned report of 1788, those of Jaén, Tomependa, Pucara de Chirinos, Colasay, San Felipe and Pimpincos are cited. With respect to the last, he says that, not possessing a synod, the parish is excluded from the plan or topographical chart of Jaén de Bracamoros (D. M. P., No. 153).

§IV. Boundaries of the Province of Jaén.

As well on the map of the Bishopric of Trujillo, drawn by its prelate, Fr. Baltasar Jaime in 1786, as on the map of the Intendencia of Trujillo, traced by Baleato by order of the Viceroy in 1792, the province of Jaén appears bounded on the north by the provinces of Loja and Cuenca, of the Bishopric of that name; on the west, by the province of Piura; on the south, by that of Cajamarca, and on the east, by that of Chachapoyas, those three belonging to the Bishopric and to the Intendencia of Trujillo, of the Viceroyalty of Peru. The province of Jaén figures on the map of the Bishopric as a province of the Bishopric of Trujillo, and, in the map of the Intendencia, it is excluded as a dependency of the Viceroyalty of Santa Fe.

In the Brief for Peru, the boundaries of the province of Jaén are designated, and the boundary towns belonging to the contiguous Peruvian provinces of Piura, Cajamarca and Chachapoyas specified; but we need not go into these details, for the general lines may be clearly seen on the maps of the Bishopric and Inten-

dencia. They are: on the west, the Huancabamba; on the south, from Querecotillo to the mouth of the Llaucán, or Cujillo, in the Marañón, and, on the east, the Marañón, lower waters, as far as Santiago.

According to the ecclesiastical map, the province of Jaén extends north over much greater territory than is embraced in the province possessed today by Peru and claimed by Ecuador. To understand this distinction, one must take into account: 1st, that when the Corregimiento of Yaguarsongo was extinguished, Santiago de las Montañas was attached to that of Jaén; 2d, that even when Santiago de las Montañas belonged to the Bishopric of Trujillo, it was taken in as a part of the Bishopric and Comandancia general of Maynas by the Royal Decree of 1802, and, 3d, that, whatever might have been the extent of that province on the north, Peru fixes her northern boundary in the river Canchis, because up to that line stretch the towns that voluntarily incorporated themselves therein.

In claiming, in this Arbitration, the province of Jaén, the Government of Ecuador has marked out for boundaries, in its Memorial of 1892, the following: 1st, from the sources of the *Macará*, a line which, intersecting the cordillera of Ayavaca, extends downward towards the south until it meets the lake of Huarangas; 2d, thence the present dividing line between the provinces of Jaén and Huancabamba as far as the confluence of the river emptying into the Huancabamba near Chichahua; 3d, the course of that river as far as the summit of the cordillera dividing the province from that of Lambayeque; 4th, the course of the cordillera, along its summit, until it arrives at a point over Querecotillo; 5th, a line descending in search of the source of the river that runs to the southern part, right at Querecotillo, so that that town is enclosed within Jaén territory; 6th, from the confluence of that river with the Chota river, along the course of the Chota to its confluence with the Chipte river; 7th, from that point along a line which, cutting across the Llaucán river comes up with the Marañón in such manner that it encloses within the line Pimpingos, Cujillo and Pión, runs up along the upper waters of the Marañón, and, on its right, meets the mouth of the southern river at Lonia; 8th, from its source, a line running along the foot of the cordillera above Lonia and Jamón (Yamon) in such manner that those towns are taken into the demarcation, and, following along the right bank of the Marañón, descends with that river as far as the point at which, cutting across the Utcubamba river, it

enfolds the towns of Bagua, Chica, Copallín and Peca; thence to the "embarcadero" on the *Chuchunga*, and, running along that river, to the point of its entry into the Marañón (pp. 340, 341).

If, in its Final Memorial, as we have inferred, the Government of Ecuador claims the line of the supposititious Pedemonte-Mosquera protocol, then, for the foregoing lengthy and confused description, the following much simpler courses are substituted: 1st, from the *Macará*, a line to the source of the Huancabamba, in the cordillera; 2d, the entire course of the Huancabamba (as the western and southern boundary of Jaén), as far as its disemboguement in the Marañón, and, 3d, thence along the course of the Marañón (as the eastern boundary) as far as *Chuchunga*. It is assumed, in that protocol, that the Minister of Peru accepted the general frontier line proposed by the Minister of Colombia, save in this, that he proposed in his turn, that, leaving the upper Marañón, the line should ascend along the *Chinchi*pe to the *Macará*—that is to say, leaving in Peru the province of Jaén—a question which, as stated, remains pending (D. M. P., No. 26).

The Government of Peru defends as its own the province of Jaén, and, as that province is enclosed within its territory on the west, south and east, it is interested only in fixing the *northern* boundary line, which it designates as running from the source of the *Macará*, in the Espíndula ravine, following the entire course of the Canchis to the disemboguement of the latter in the *Chinchi*pe. For the sake of the argument, however, it submits all the boundaries of the province of Jaén.

The province is bounded on the *southeast*, it says, by the towns of Balcho, Cumba, Yamón and Sonia, belonging to the province of Luya and Chillaos (corregimiento of the province of *Chachapoyas*, separated from the province of Jaén by the Marañón); on the *south*, by the circumscriptions of Pión, Sócotá, Cochobamba, Cuterbo and Querocoto, belonging to the province of *Cajamarca*; on the *west*, by the settlements of Huarmaca, Sondorillo and Sondor, belonging to the province of Piura, and, on the *north*, by the Canchis river, to its confluence with the *Chinchi*pe, the towns of Zumba and Chito remaining, therefore, in the Corregimiento of Loja, and those of Chirinos and San Ignacio (with the additions of Namballe, Canchis and Garruchas) in the Gobierno of Jaén.

The line, then, which constitutes the contour of the province of

Jaén is formed by the Canchis river as far as the Chinchipe, the course of the Chinchipe to its entry into the Marañón, follows along the latter and its affluent, the Cujillo, the Chota and part of the Huancabamba to the San Felipe or Sallique river, ascends the course along the last-named river, taking in the summit of the Eastern cordillera, in order to meet the source of the Macará river (D. M. P., Vol. V, p. xxix).

We believe that the points in common in those descriptions may be summarized, simplified and better understood by saying: on the *north*, the river Canchis (to which statement Peru confines herself for the reason given; Ecuador indicates none); on the *east*, the line of the Chinchipe and the Marañón; on the *west*, the line of the Huancabamba and its connection with the source of the Macará, and on the *south*, the Huancabamba itself (as in Ecuador's last claim), or a more southerly line, with slight differences between the first claim of Ecuador and that of Peru.

It is important to note that the Llaucán comes from Chota and unites with the Súcota, forming the *Cujillo*, in order to empty into the Marañón.

And it is even more important to note that *Pimpincos* was a parochial district of the Bishopric of Trujillo, comprising several towns of which only the town of Pimpincos depended in political matters on the Viceroyalty of Santa Fe; but the others, its annexes, were outside of the Gobierno of Jaén and dependent on the Viceroy of Peru. Pión belonged to the district of Chota in the province of Cajamarca; Balcho, Cumbio, Yamón, and Sonia to the district of Luya, of the Corregimiento of Luya and Chillaos, to the ancient province of Chachapoyas (B. P., p. 170). Ecuador included those towns in the line of her first claim as though they had depended on the government of Jaén.

CHAPTER VIII.

Gobierno of Guayaquil.

SUMMARY:

- I. Segregation of the Gobierno of Guayaquil from the Viceroyalty of Peru and its reincorporation therein.—1. The Gobierno of Guayaquil passed to the Viceroyalty of Santa Fe when the latter was formed.—2. Royal order of July 7, 1803, attaching that Gobierno to the Viceroyalty of Peru.—3. Confirmation of that royal order by those of 1806 and 1808.
- II. Effectiveness of the aggregation to the Viceroyalty of Peru.—1. Political union.—2. Administration and finances.—3. Justice.—4. Matters excluded in 1819.
- III. Towns and boundaries of the Gobierno of Guayaquil.—1. Description by the President of Quito, the Marqués de Selvaalegre, in 1754.—2. Description of the Bishopric of Quito, 1755.—3. Description by Judge Navarro, XVIIIth century.—4. Distribution of tithes in the Bishopric of Cuenca in 1809 and 1810.—5. Memorial of the Deputy, D. Pedro A. Bruno, as to the formation of judicial districts in the province of Guayaquil in 1814.—6. Description by Baleato, 1820.—7. Résumé.

§I. Segregation of the Gobierno of Guayaquil From the Viceroyalty of Peru, and Its Reincorporation Therein.

1) **The Gobierno of Guayaquil Passed to the Viceroyalty of Santa Fe when the Latter was Formed.**—From its beginning the Gobierno of Guayaquil, the capital of which was founded in 1535, had been a dependency of the Viceroyalty of Peru, under the immediate jurisdiction of the Audiencia of Quito, until, on the creation of the Viceroyalty of Santa Fe, it became a part of the latter.

As the inhabitants of Guayaquil, however, had depended on the Pacific coast as the natural outlet for its products and for facilitating intercommunication, that change operated to the prejudice of their interests. Their shipping industry was impaired and their ports and arsenals deprived of the protection they had always received from Lima and which was not forthcoming from Santa Fe (D. M. P., No. 125).

2) **Royal Order of July 7, 1803, Aggregating that Gobierno to the Viceroyalty of Peru.**—The Junta of Fortifications and De-

fense in America recommended to the King the advantage to be derived from the restoration of the Gobierno of Guayaquil to dependency on the Viceroy of Lima because of the greater facility to the latter over that of Santa Fe in the matter of the sending of money, troops and munitions of war, the supervision of expenses and investment of funds, and the lending of opportune aid in its defense. The recommendation was put in effect by the royal order of July 7, 1803, providing that the Gobierno of Guayaquil should thereafter be dependent on the Viceroyalty of Peru and not on that of Santa Fe.

In his response, on the 19th of December, 1803, the Viceroy of Santa Fe accepted notice that "His Majesty had resolved to *separate* the Gobierno of Guayaquil from dependency on this viceroyalty and to *attach* the Gobierno of Guayaquil to the Viceroyalty of Lima," and stated that he would refer the royal order to the President of Quito and the proper officers at the head of the treasury.

The Viceroy of Peru also answered, on the 23d of January, 1804, stating that he had issued the proper orders to effectuate "the *union* of the government of the city of Guayaquil and its district to this Viceroyalty," in conformity with that sovereign act (D. B. P., No. 84).

3) **Confirmation of that Royal Order by those of 1806 and 1808.**—When the Gobierno of Guayaquil was incorporated in the Viceroyalty of Peru, it found itself under the jurisdiction of the Audiencia of Quito, except that it depended in *mercantile matters* on the Tribunal of Commerce at Cartagena; but by virtue of the royal order of 1803, the Tribunal of Commerce at Lima held itself to be the proper authority in such matters and made the appointment of the deputy of the Commercial Tribunal for Guayaquil. The Governor raised difficulties, but the Viceroy of Peru declared that the act of incorporation also embraced mercantile matters, and confirmed the appointment of the deputy, who then entered upon the performance of his functions. The Governmental Junta of Commerce at Cartagena repaired to the King with its complaints, whereupon the latter issued the royal order of February 10, 1806, providing as follows: "In view of the recommendations of your Lordships in your letter of March 25th of the year last past, respecting the question as to whether, in consequence of its aggregation to the Viceroyalty of Lima, the province of Guayaquil should depend for mercantile matters on your commercial tribunal or that

of Lima, his Majesty has been pleased to order *that such aggregation is absolute*, and that, in consequence, mercantile matters must be referred to the Commercial Tribunal at Lima and not to that of Cartagena." The order was also communicated to the Viceroy of Peru for execution (D. B. P., No. 86).

It will be observed that that royal order of 1806 not only confirmed the aggregation of the Gobierno of Guayaquil to the Viceroyalty of Peru, but declared positively that the aggregation was absolute.

By another royal order, of January 8, 1808, the jurisdiction of Peru was ratified and it was declared that the deputy of the Commercial Tribunal at Guayaquil should render decisions in mercantile matters and allow appeals to the Tribunal at Lima (D. B. P., No. 87).

§II. Effectiveness of the Aggregation to the Viceroyalty of Peru.

The aggregation, therefore, was accomplished, and in a manner so complete, that it affected, not only affairs, political and military, but those of all classes, including matters judicial.

1) **Political Union.**—There is one fact revealing, in a most convincing manner, just how the Gobierno of Guayaquil was held to be united with the Viceroyalty of Peru, as forming an integral part of it and its political system.

By royal decree issued in the name of Ferdinand VII on the 22d of January, 1809, the Supreme Central Junta of Spain, considering that the dominions of the Indies ought to have national representation by a corresponding number of deputies and constitute a part of that Junta, ordered that each of the existing viceroyalties and the lesser captaincies-general should elect a deputy for that purpose.

The order also provided, in effect, that elections should be held in the chief municipalities of the districts, and that from those elected a tribunal of three members should be formed, to sit as a royal junta, from which should be chosen by lot the one among the three who was to be the deputy from the viceroyalty to represent it as a voting member in the Supreme Junta.

Guayaquil did not take part in the elections held in the Viceroyalty of Santa Fe, but did participate in those of the Viceroyalty

of Peru, and even enjoyed the satisfaction of seeing its elector, D. José de Silva y Olave, figure as a member of the ternate; in which he was successful in the drawing of lots and was proclaimed *Deputy* for the Viceroyalty (1809).

This means that *the whole* of the Viceroyalty of Peru was represented as a part of the Spanish nation by the deputy elected by Guayaquil (D. M. P., No. 232).

2) **Administration and Finances.**—As examples of the authority of the Viceroy of Peru in administrative matters, we note: his decree of June 28, 1810, subordinating the administration of posts at Guayaquil to the chief at Lima (D. M. P., No. 233), and the appointment of perpetual councilman of the municipality of Guayaquil, made on the 7th of February, 1812, in favor of D. Vicente Avilés, to exercise his office in the same manner as in the cases of the other councilmen throughout the viceroyalty (D. M. P., No. 235).

With respect to matters of finance pertaining to the Gobierno of Guayaquil, it is enough to cite the account of receipts and expenditures rendered by the Accountant-General of Revenues at Lima September 12, 1811, covering the principal office of the administration of revenues and the twelve subordinate officers of that province (D. M. P., No. 236).

3) **Justice.**—In 1809 the Governor of Guayaquil, D. Bartolomé Cúcalón, seized and sequestered the property of D. Carlos Lagomarcino, to the value of 140,000 pesos, under the pretext that the latter was in correspondence with the Quito insurgents. The Viceroy of Peru caused the record in the case to be brought to Lima, and, on the advice of the Fiscal, ordered a stay in the proceedings and restitution of the sequestered property. The Governor *ad interim* carried the order into effect, but when the proprietary Governor returned to his post, he entered a new order of imprisonment and revived the attachment.

The Viceroy of Peru thereupon ordered that the case be brought before the full bench of the Royal Court of Audiencia at Lima, accompanied by a certified copy of the royal orders dealing with "the absolute aggregation of that province" (Guayaquil) "to this Viceroyalty." At its session of June 28, 1810, the Royal Court unanimously held that the orders of the Viceroy should proceed to execution, vacating forthwith the order of imprisonment and quashing the attachment, and without allowing the appeal pending

before the Court of Audiencia at Quito to serve as an excuse for the slightest delay, "because, in view of the separation from the Audiencia of Quito of the province of Guayaquil, and its aggregation, in all its departments, to the capital (Lima), that Audiencia must conform to the dispositions made in this proceeding by His Excellency, the Viceroy, based on the advice taken in consultation with his law officers." The judgment of the Royal Court was concurred in by the Viceroy (D. M. P., No. 238).

The Royal Court of Audiencia at Lima, therefore, held with the Viceroy as the superior authority in dealing with questions of justice arising in Guayaquil, and made reference to the proceeding in which, acting on advice taken in consultation with his law officers, the Viceroy of Peru had declared himself competent to act, in all the ramifications of the matter, by virtue of the absolute aggregation of that province.

Thus it was that, for this reason, and also because the Audiencia of Quito had been transferred to Cuenca as a result of the insurrection, the residents of Guayaquil had to carry their cases to Lima. So the municipality of Guayaquil petitioned the Viceroy of Peru, in March of 1814, that, in view of the hardship to the entire district of being obliged to repair to Lima "for settlement of matters in litigation," and without ceasing to recognize the fact that it formed part of his territory at the last demarcation, supreme jurisdiction should be restored to Quito. Yet, on the 14th of April, in the same year, in concurrence with the Fiscal, the Viceroy decided that the petition was contrary to law, because the aggregation of the province of Guayaquil to the Viceroyalty of Peru had been complete (D. M. P., No. 230).

4) **Matters Excepted in 1819.**—In view of that refusal by the Viceroy, the municipality of Guayaquil addressed itself to the Secretary of State and of the Affairs of the Indies on the 28th of October, 1815, asking that Guayaquil be united to Quito, "at least for the purposes of litigation," for, from the time when, in 1810, the Viceroy of Peru, the Marqués de la Concordia, decreed its separation from the Audiencia of Quito, which, "being closer," had cognizance of matters "in litigation," the condition of its inhabitants had been most dispirited, they preferring to see themselves defeated rather than to bring their appeals to Lima (D. B. P., No. 90).

That petition was made a part of the record in the proceeding then before the Council of the Indies relating to the project of D.

Toribio Montes, President of Quito, to erect that audiencia into an independent captaincy-general, and which record contained also, as we have said in another place, reports by Minister Requena, the office of the Accountant-General and the Fiscal (D. M. P., No. 102). In conformity with the Council's recommendations, the royal decree of June 23, 1819, was issued, wherein the Viceroy of Peru was instructed that he, as well as the Audiencia of Lima, should abstain from cognizance of "matters of justice, civil and criminal, and matters relating to the Royal Treasury in the city and province of Guayaquil belonging solely to the Audencia of Quito," and matters were restored to the status they occupied before its aggregation by the Marqués de la Concórdia in 1810, to Peru (D. B. P., No. 91).

The royal orders of 1803 and 1806 were, therefore, not nullified; nor was it ordered that the Gobierno of Guayaquil should cease to be a dependency of the Viceroy of Peru in military matters or as to the general political or administrative system. On the other hand, there were excepted from the cognizance of the authorities at Lima matters of *justice and finance*, over which the Viceroys had, since 1810, believed they could extend the jurisdiction of Lima. Considering the date of that royal decree (1819) and the state of the insurrection in the Viceroyalty of Santa Fe, it is to be presumed that it never actually became effective.

§III. Towns and Boundaries of the Province of Guayaquil.

1) Description by the President of Quito, the Marqués de Selvaalegre, 1754 (D. B. P., No. 28).—Of the province of Guayaquil the Marqués de Selvaalegre made a very detailed description, stating that it contained four principal ports (Guayaquil, Manta, Santa Elena and Puná), and that it comprised *eleven lieutenancies*, namely, Guayaquil, Puná, Naranjal, Yaguache, Ojibar; Baba, Palenque, Daule, Balsar, Puerto Viejo and Punta de Santa Elena. Besides those settlements, he cites the towns of Machala, Morro and Chongón (chief town of the Punta de Santa Elena.)

2) Description of the Bishopric of Quito, 1755 (D. M. P., No. 67).—According to this description, Guayaquil "was bordered on the south by the town of Machala and the coast district of *Tumbes*, which country belonged to the Corregimiento of *Piura*. * * *"

The entire area, stretching from the Punta de Santa Elena to the town of Ojibar, embraces *seven lieutenancies*, with as many more *curacies*, in this order: *Babaoyo* (Ojibar, Caracol, Quilca, Mangaches); *Daule* (Santa Lucía, El Balsar); *Baba* (San Lorenzo, Palenque); *San Jacinto de Yaguache* (Nauzas and Alonche); *La Puná*; *Puerto de Viéjo* (Morite Christi, Picoassa, Charapoto and Jipijapa); *Punta de Santa Elena* (Chongón, El Morro, Colouche and Chanduy).

3) **Description by Judge Navarro, XVIIIth Century** (D. M. P., No. 196).—This Judge of the Audiencia of Quito, in his description thereof, states that the Corregimiento of Guayaquil is bounded on the north by Esmeraldas, on the south by part of the Corregimientos of Loja and Cuenca, on the west by the gulf and coast of the southern sea and on the east by the western cordillera of the Andes. That corregimiento was one of great value and usefulness to the *seven lieutenancies* of which it was composed; but those lieutenancies are now wholly independent of the corregimiento, which is reduced to Guayaquil, the capital, its only city.

The seven lieutenancies embraced within the boundaries are: Puerto Viéjo, Punta (de Santa Elena), Puná, Yagúache, Babaoyo, Baba and Daule.

Navarro's description is prior to the segregation of the town of Machala, of the Lieutenancy of *Puná*; and, speaking of it, he says: "It is bounded on the south by the Corregimientos of *Piura* and *Loja*, the jurisdiction being divided by the *Jubones* river, which debouches on the banks of the *Payamá*."

By royal order of March 27, 1784, the district of *Machala* was separated from the Lieutenancy of *Puná*; that district entered into the formation of a new lieutenancy, and the said river *Jubones* in consequence became its southern boundary (D. M. P., No. 193).

4) **Distribution of Tithes of the Bishopric of Cuenca, 1809 and 1810** (D. M. P., No. 197).—In the scheme of distribution, we find the towns of the territory of Guayaquil classified as follows for the payment of tithes:

Province of Guayaquil: Ciudad Nueva, Ciudad Vieja, Yaguachi, Samborondón, Daule, Balzar, Santa Elena, Morro, Naranjal, Machala, Baba, Babahoyo and Palenque.

Province of Puerto Viéjo: Puerto Viéjo, Jipijapa, Montechristi, Tosagua and Canoa.

5) **Memorial of the Deputy, D. Pedro A. Brune, as to the Formation of the Judicial Districts in the Province of Guayaquil, 1814** (D. M. P., No. 198).—That memorial contains a *résumé* of the tax lists, corrected for 1804 and 1805 by order of the Gobierno, and made up by D. Bartolomé Cucalón, who was Governor of Guayaquil; in the document figure *fifteen lieutenancies*, comprising forty-five towns, with a total of 61,362 souls.

The fifteen lieutenancies are: Guayaquil, Puná, Machala, Santa Elena, Naranjal, Yaguache, Samborondón, Babahoyo, Pueblo Viejo, Palenque, Baba, Balzar, Daule, Porto Viejo and La Canoa.

The provincial deputy for Guayaquil proposes the scheme for the formation of judicial districts of those lieutenancies, and, among other things, states that "the total length of the province is 176 geographical leagues from the southern end of the Lieutenancy of Machala to the northern end of La Canoa * * * and that it is bounded on the south by the town of Tumbes, of the district of Piura."

6) **Description by Baleato, 1820** (D. M. P., No. 199).—Baleato says that the Gobierno of Guayaquil "comprises the capital and the fourteen districts or lieutenancies of Machala, Naranjal, Yaguache, Babahoyo, Palenque, Balsar, La Canoa, Puerto Viejo, Santa Elena, Daule, Baba, Samborondón, Pueblo Viejo and La Puná. * * *"

"Its entire extent is from 24 minutes of the north latitude, in which are located the rivers of Coximies, to 3 degrees, 24 minutes south, that is, the immediate vicinity of the Sabanilla, or Jubones, river, and its greatest breadth is some 34 leagues by triangulation from the seacoast on the east (*sic*) to the western skirt of the cordillera of the Andes.

"It is bounded on the north by the district of Tacames and the lands of the red Indians; on the northeast, by the districts of Quito and Tacunga; on the east, by those of Guaranda and Alausi; on the southeast, by that of Cuenca; on the south, by the district of Piura, and on the west by the Pacific ocean."

7) **Résumé.**—The descriptions agree as to the extent and boundaries of Guayaquil. They differ, however, with respect to the number and constituent parts of the lieutenancies, this as a result of the various transformations through which they passed in the XVIIIth century, one of the most important being the above-mentioned creation of the Lieutenancy of Machala in 1784.

It is important to note their coincidence in designating Machala as the ultimate district of the Gobierno of Guayaquil, which district is bordered on the south by the *Jubones* river, as the divisionary line with the province of Piura; *Tumbes*, however, is only mentioned among the many other towns to indicate that it belonged to Piura.

CHAPTER IX.

Corregimiento of Piura.

SUMMARY:

- I. The Corregimiento of Piura, in general.—1. Its origin.—2. Its pertinence to the Audiencia of Lima.—3. Towns of which it was composed in the XVIth century.—4. Its dependency on the Bishopric of Trujillo.
- II. Territory of Piura in the XVIIIth and beginning of the XIXth century.—1. Proceedings relating to land adjustment in 1712.—2. Statement concerning revenues (1762) and excise accounts (1785 to 1801).—3. Report of the Deputy, D. Pedro A. Bruno, 1814.
- III. The line of the Macará.
- IV. The line of the Alamor.

§I. The Corregimiento of Piura, in General.

The ancient province of Piura, located to the south of the Gobierno of Guayaquil and to the west and south of the Corregimiento of Loja, was always a dependency of the Audiencia and Viceroyalty of Lima. From its birth it had been a *corregimiento*; within it was embraced Tumbes. Let us see, first, what in general the Corregimiento or province of Piura was, so that afterwards we may locate ourselves particularly in the part known as Tumbes, to which one of the questions in the present litigation refers.

1) **Its Origin.**—In his first expedition along the coast of Peru in 1527, Francisco Pizarro discovered the territory of Tumbes, the port of Paíta and other points, including the valley of Chimú, where the city of Trujillo was afterwards founded.

By royal decree of July 26, 1529, he obtained the right, as Governor and Captain-General of Tumbes and other provinces of Peru, which he had gained for the Crown, to continue his discoveries and conquests over an area of 200 leagues from Temupulla, as far as Chíncha, receiving soon afterwards the rank of *Adelantado* (in early times given to the governors of the Spanish colonial provinces). (D. M. P., No. 169.)

Acting under that authority, he undertook his second voyage in January, 1531, setting out from Tumbes and penetrating into the interior as far as Cajamarca. He discovered the valleys of the Sullana, the Chira, Amotape, Huaca, Copis and many others, founding the city of San Miguel de *Piura*, a name which embraced the entire corregimiento or provinces of which it was the capital.

When, by virtue of the royal decree of June 19, 1840, the demarcation was made of the Bishoprics of Cuzco, Lima and Quito, the city of San Miguel de Piura, with its whole jurisdiction, was assigned to the last-named bishopric (D. M. P., No. 63).

2) **Its Pertinence to the Audiencia District of Lima.**—On the creation, in 1542 and 1563, of the Audiencias of Lima and Quito, the province of Piura, including the port of Paita, was included in the Audiencia of Lima, as were also the provinces of Cajamarca, Chachapoyas and Moyobamba, all bordering on the Audiencia of Quito (Laws 5 and 10, Title 15, Book II).

It might perhaps be assumed that, because the royal decrees creating those audiencias speak of the ports of Paita and Piura as belonging to the Audiencia of Lima, reference was made only to the geographical point on the coast and to a single inland city; but it is evident that in all the demarcations of the period the towns and cities, with the boundaries of their jurisdictions, are understood. The city of San Miguel de Piura, conjointly with the port of Paita and all the other towns of the province of Piura, formed the *corregimiento*, which bordered on the Corregimiento of Loja and the Gobierno of Guayaquil, as we shall see in a moment.

So certain is this that in Law 1, Title 2, Book V of the *Compilation of the Indies* of the time of Charles II, published in that code in the year 1680, the *Corregimiento of the city of San Miguel de Piura and the port of Paita* are mentioned as a single charge among those reserved to be prescribed by the King in the Audiencia District of Lima.

Thus, then, the Audiencia of Lima extended as far as the jurisdiction of the Corregimiento of San Miguel de Piura and port of Paita should extend, which we shall proceed specifically to show.

3) **Towns of which it was Composed in the XVIth Century.**—According to the statement of López de Caravantes, the Viceroy, D. Francisco de Toledo, who arrived on the coast of Peru in 1569, designated for the Corregimiento of Piura twenty-six allotments; Tumbes, Punta la Buja, Paita, Colán, Motape, Sechura, Guancabamba, Ayavaca, Mancora and the others he mentions, which indi-

cate the great extent of its territory (*Relaciones geográficas de Indias*, vol. I, app. No. II, p. cXL).

By royal decree of November 13, 1581, the Viceroy of Peru was ordered "to draw up a statement" concerning all the towns in his government, specifying their authorities and jurisdictions. That was done by the Viceroy D. Martín Enríquez on the 8th of February, 1583, setting forth the organization of the Corregimiento of San Miguel de Piura and port of Paita, then under the charge of Captain Alonzo Forero, and stating that the said Corregidor (Forero) had under his jurisdiction the following Indian towns; a settlement next to the city, the towns of Colán, Sechura, Catacaos, San Sebastián del Valle, Guancabamba, San Nicolás de Tumbes, the allotment of Ayavaca and the allotments of Chinchasara, Sondor and Serrán, with the town of Frías (D. M. P., No. 172).

At the instance of the Corregidor, Alonzo Forero, a statement was drawn up in 1593, setting forth his merits and services, among which were those rendered to that corregimiento during a period of seven years, such as the construction of government buildings, the cabildo and prison in the city, the roads from Tumbes to Amotape and Paita and from Tumbes to the mines of Zaruma, the road from Guarmaca to Còpis and various irrigation work (D. M. P., No. 173).

4) **Its Dependency on the Bishopric of Trujillo.**—As we have seen, there arose the anomaly of the dependency of the Corregimiento of Piura in temporal matters on Lima, and in spiritual matters on Quito. And no doubt the Archbishop of Lima had to put difficulties in the way of the jurisdiction of the diocese of Quito, for we see the Bishop of that diocese, Días Arias, in the XVIIth century, repairing to the Council of the Indies to protest against the intrusion of that prelate into the affairs of the town of Piura, "which is the city of San Miguel," "and carrying off of the tithes" (D. M. P., No. 174).

That anomaly ceased to exist on the creation in 1611 of the Bishopric of Trujillo, which, as we have stated, was formed of a part of the diocese of Lima and the provinces of Jaén and Piura, taken from the diocese of Quito; the Corregimiento of Piura from that time was embraced in the Bishopric of Trujillo (D. M. P., No. 64).

In the "relation concerning the curacies and benefices of the Bishopric of Trujillo" sent by the Bishop to His Majesty, in March, 1627, these figure as of the jurisdiction of Piura: the parish of the

city and the parishes of Motupe, Olmos, Sechura, Catacaos, Paíta and Colán, Salas and Penachi, Guancabamba, Ayabaca, Frías and Tumbes (D. M. P., No. 148).

§II. Territory of Piura in the XVIIIth and the Beginning of the XIXth Century.

1) **Proceeding Relating to Land Adjustment in 1712.**—By virtue of the royal decree of August 15, 1707, Associate Judge D. Gonzalo Ramírez de Baquedano, of the Audiencia of Lima, was appointed a special judge to preside over the sale and adjustment of the lands of that audiencia district—that is, to normalize the situation as to Crown lands unlawfully appropriated by private parties, or the value of which the purchasers had not yet finished paying.

That judge delegated his functions, with respect to the Piura lands, to the Corregidor, D. Gerónimo Vozmediano, who, on the 23d of May, 1712, issued an order, in which, under the appellation "Corregidor and Chief Magistrate of the city of Piura and its jurisdiction," he ordered all the inhabitants of the following-named towns to appear when cited and present their titles: Tumbes, Amotape, La Chira, Colán, Ayabaca, Chocán, Chalaco, Frías, Pacaypampa, Cumbicos, Guancabamba, Sondor, Sondorillo, Guarmaca, Olmos, Motupe, Salas, Penachi, Cañares, Catacaos, etc.

That order, as well as the proceeding based thereon, in which is set forth the action taken in all of those towns in compliance therewith, and the detailed statements as to the lands, establish conclusively the jurisdictional extent of the Corregimiento of Piura at the beginning of the XVIIIth century (D. M. P., No. 175).

2) **Statement Concerning Revenues (1762) and Excise Accounts (1785 to 1801).**—On the 25th of January, 1762, General D. Cristóbal Guerreros, "Corregidor and Chief Magistrate of the city of San Miguel de Piura and its province," issued a certification of the sworn accounts of the royal revenues emanating from the towns of that province, mentioning, besides the capital, Catacaos, Sechura, Colán, Puerto de Paíta, Río de la Chira, Tumbes, Amotape, Ayabaca, Frías, Pacaypampa, Cumbicos, Sondorillo, Huancabamba, Sondor, Guarmaca, Olmos, Copis, Motupe, Salas, Penachi and Cañares, including also the subdivisions of some of those towns (D. M. P., No. 184).

In the accounts of the administration of excise of Paíta for 1785

figure the receipts taken in by the Receiver's office at Tumbes, La Guaca, Amotape, La Punta, Querocotillo, Colán and Solana (D. M. P., No. 186); and in the entries in the excise books of Piura for 1794, 1795, 1796 and 1801, appear, in different connections, the towns of Tumbes, Ayabaca, La Chira, Santa Ana and Guancabamba (D. M. P., No. 187).

3) **Report by the Deputy, D. Pedro A. Bruno, 1814.**—The Provincial Deputy for Guayaquil, D. Pedro Alcántara Bruno, in the absence of the Deputy for Trujillo, being charged to make a provisional division of that province into judicial districts, submitted a report on the 19th of April, 1814, in which he designated the number of inhabitants and indicated the principal towns of Piura that formed part of the Intendency of Trujillo. In that report he also set forth the distances of some of the towns from the city of San Miguel as follows: Seclura, 10 leagues; Catacaos, 2 leagues; Querocotillo, 10 leagues; Amotape, 12 leagues; Port of Paita, 14; Colán, 14; Port of Tumbes on the North, 50; Frías, 20; Chalaco, 18; Ayabaca, 56; Pacaypampa, 40; Cumbicos, 42; Guarmaca, 60. He proposed that two judicial districts be formed, at the head of one of which was to be the city of San Miguel and of the other the town that might be considered the most suitable (D. M. P., No. 155).

§III. The Line of the Macará.

The territory of the Corregimiento of Piura being known by the towns contained therein, let us mark out its boundaries with the Corregimiento of Loja and the Gobierno of Guayaquil. It was separated from the Corregimiento of Loja on the north by the Macará river, on the east by the Alamor river, and from that of Guayaquil, also on the north, by the Machala river; so that its frontiers along those provinces were established by three lines, wholly determined naturally by the course of those three rivers.

The Macará, the first courses of which were called Espíndula and Calvas, and its last and broadest, the Chira, was and continued to be the divisionary line between the provinces of Piura and Loja. from the province of Jaén to the point at which it was augmented by the waters of the Alamor.

Under that line are found the towns we have mentioned, some of which are so important and so near to it, such as Ayabaca, as to be constantly cited in the above-mentioned documents as belong-

ing to the Corregimiento of Piura. In one of them, the record in the proceeding relating to the land adjustment of 1712, appear the plantations of Calvas and Macará, which give the names to the river; and, in the relation of Lopez Caravantes concerning the Indian allotments of 1630, as well as in the certification of revenues of 1762, is mentioned the town of Chira, the name of which also is given to that river (D. M. P., Nos. 175 and 184).

Geographers of high authority recognized by Ecuador, such as Montúfar, Alcedo and Villavicencio, state that the Macará river marked the limit of the jurisdiction of Piura and the line dividing, in that locality, the Kingdoms of Quito and Lima (B. P., p. 175); and the Government of Ecuador itself so recognized when, in the *Memorial* filed in this arbitration by D. Honorato Vázquez in 1892, it claimed, as a part of its frontier, the course of the Macará river from its sources as far as the Chira (p. 384).

§IV. The Line of the Alamor.

The Chira is a continuation of the Macará, or the Macará itself, continuing under that name; into the Chira flows the Alamor through the ravine of Pilares, and the ascending course of the Alamor up to its source constitutes a great section of the line dividing the Corregimiento of Piura on the east from that of Loja.

Any doubts arising with respect to certain boundary points are dispelled by the evidence furnished in the papers in certain proceedings and by the titles to certain country estates.

In 1712 the authorities proceeded to the sale of the Crown lands known as Yagueynegro, La Seiba, Totumo and Limón, and, in the notices of public sales as well as in the conveyances conferring possession, the statement appears that they were bounded on one side by the Solano ravine and on the other by the Alamor river, along the banks pertaining to the jurisdiction of Piura (D. M. P., No. 176).

Between the towns of Céllica, in the jurisdiction of Loja, and that of Querocotillo, in the jurisdiction of Piura, was located the plantation of San Francisco de Leyva, belonging to the Order of Predicadores (preachers) of Quito. In 1756 the Predicadores sold a part of that plantation, called Yagueynegro, stating at the time that the part sold was that which fell within the jurisdiction of Piura—that is, on the border of the ravine of Pilares pertaining and con-

tiguous to the Solana, and, later, a lawsuit having arisen between the owners of the Leyva and Yagueynegro plantations concerning the ownership of the Pilares ravine, a litigation was started which was brought to an end only in 1800 by a decision of the Corregidor of Loja, wherein it was held that the Pilares ravine was the common boundary line of both corregimientos (D. B. P., No. 83).

The Provincial Deputy, D. Manuel Cabada, in his memorial of 1814 concerning the division of districts in the Intendency of Trujillo, states that the Alamor is the dividing line between the district of the Presidency of Quito and the Viceroyalty of Peru (D. M. P., No. 188).

And the Government of Ecuador, in the aforementioned *Memorial* of D. Honorato Vázquez, also recognizes, as its frontier, the course of the Alamor down to its confluence with the Chira (p. 384).

CHAPTER X.

Lieutenancy of Tumbes.

SUMMARY :

- I. Tumbes formed a part of the Corregimiento of Piura, as has been shown.
- II. The line of the Machala river and watersheds of Saruma.—1. Lands of the community of Tumbes on both banks of the river.—2. Private estates known as The Pedregal, The Corrales and The Rinconada.—3. Properties on the Northern bank of the Tumbes.—4. Plantations of Callancas and the Yomón (the Machala).—5. Plantation of Sarumilla; most important documents relating to that estate (1627 to 1825).

§I. Tumbes Formed a Part of the Corregimiento of Piura, as Has Been Shown.

It has been demonstrated fully in the preceding chapter that the city of Tumbes, with its territory, always formed a part of the Corregimiento of Piura, of which it was a *lieutenancy*, and a dependency, therefore, under that corregimiento, of the Audiencia of Lima, in the Viceroyalty of Peru.

With the discovery of Tumbes in 1527 began the discoveries of Francisco Pizarro on the coast of Peru. The Crown granted to Pizarro the concession of Tumbes and other provinces of Peru and appointed him governor thereof in 1529. It was from Tumbes that Pizarro set forth, in 1531, to penetrate into the interior as far as Cajamarca, conquer the province of Piura and found his capital in the city of San Miguel.

And the name of Tumbes appears in all the documents we have referred to for the purpose of establishing the points and territories to which extended the jurisdiction of the Corregidor of Piura; the allotments of Indian lands made by the Viceroy, D. Francisco de Toledo, on his arrival in Peru in 1569; the relation concerning the towns in that corregimiento written by the Viceroy, D. Martín Enriquez, in 1583; the Corregidor Alonso Forero's account of his services in 1593, in which he states that he opened the road from Tumbes to Motape, Paita and the mines of Zaruma; the relation

concerning curacies submitted by the Bishop of Trujillo to His Majesty in 1627; the record of the proceeding as to the inspection and adjustment of land tenures instituted by the Corregidor Voz-mediano in 1712; Corregidor Guerrero's sworn statement of 1762 concerning the tax paying towns; the accounts of administration of excise revenues of Paíta, 1785, and of Piura, from 1794 to 1801; and the memorial concerning the formation of judicial districts in Piura drawn up by Pedro Alcántara Bruno, Provincial Deputy for "Guayaquil," in 1814.

§II. The Line of the Machala River and Watersheds of Saruma.

Ecuador demands, in her abovementioned Memorial of 1892, that there be fixed, as the frontier in that locality, the disembogement of the Tumbes river into the Pacific, the course of that river Tumbes to its southernmost point and a line drawn from that point to the Alamor river (p. 384).

We shall not now undertake to ascertain what were the legal fundaments on which that claim is based; we merely affirm positively that it could not have prevailed under the colonial régime, because she gave up to the Lieutenantcy of Tumbes, and consequently, to the Corregimiento of Piura, the town of Tumbes itself and all the territory within its jurisdiction, and that of the corregimiento which was located on the other side of the Tumbes river, between that river and the Machala, the boundary line of the Gobierno of Guayaquil.

Nor, having proven it conclusively, is it necessary to dwell on the facts that the town of Tumbes was a dependency of the Corregimiento of Piura, and that the towns always conformed to their jurisdictions, as is indicated by the very appellation of corregimiento, given to the city of San Miguel, by which it was also designated. But we do propose to show, by concrete facts, that the jurisdiction of Tumbes extended over the territory claimed by the Government of Peru, bounded on the north by the Machala river as far as the point at which the jurisdiction of Guayaquil terminates, and on the east by the watersheds of Saruma along the line uniting that point with the beginning of the Alamor river, the divisionary line with the ancient Corregimiento of Loja.

1) **Lands of the Community of Tumbes on Both Banks of the River.**—In 1800 the Intendency of Trujillo carried on a proceeding

in regard to the accounts of rentals of lands in the community of Tumbes situated on *both* sides of the river of that name. The accounts for the year 1799 cover the rentals from those lands on *both banks* of the river (D. M. P., No. 179).

In 1804 a prosecution was in progress for the malversation of funds from the Treasury of the community of Tumbes in which were deposited the proceeds of those land rentals (D. M. P., No. 182).

2) **Private Estates Known as the Pedregal, the Corrales and the Rinconada.**—Captain Fausto Miró dying intestate, the judicial declaration of heirship was made in favor of his brother in 1804 by the judge delegated for the judicial district of Piura. In the inventories were included the property that had belonged to the deceased in the country estates known as the Pedregal, the Corrales and the Rinconada, in the jurisdiction of Tumbes, and of that property the heir took possession (D. M. P., No. 183).

3) **Properties on the Northern Bank of the Tumbes.**—On the 30th of December, 1715, at the port of Paita, Captain Juan Manuel Durán sold to Juan Núñez the swamp and pasture lands which, as the vendor states in the deed, “belong to me and are situated on the *bank* of the river on which is located the said town of Tumbes * * *; on the upper part of the river as far as the Higuerón de la Cordillera, and on the lower part of the river in front of the Plateros ravine, which is on *this* bank (looking from Paita).”

The purchaser, Juan Núñez, in his turn, sold part of those plantations to Juan de los Ríos at Piura, February 10, 1716, stating in the deed: “A parcel of land, pastures and swamps that I hold and possess in the said town of Tumbes on the *other bank* of the river (looking from Piura), contiguous to said town, from a point opposite Cerro Blanco, where the woods end, which is the Cruz de Caña, and which I fix upon as a landmark, on the river above said town, and border on my lands known as El Hospital, and, on the lower part, to a point opposite the Plateros ravine, which lands border on Crown lands of His Majesty.”

In view of those deeds and of an attested report, the demarcation of the lands was made in 1720 by order of the Corregidor of Piura (D. M. P., No. 177).

In 1782 a suit was brought by Rosa Flores against Pedro Núñez involving his right “to the lands lying between landmarks and

known as *El Hospital*, located on the limits of the town of Tumbes" (to the right of the river); the suit was decided by the Alcalde of Piura, sitting as Chief Magistrate in the absence of the Corregidor of that province (D. M. P., No. 178).

4) **Plantations of Callancas and El Yomón (Machala).**—In the record of the proceeding of inspection and adjustment of land tenures of 1712, of which we have spoken, appears the publication of the order of the Corregidor of Piura, D. Jerónimo Vozmediano, in the town of Tumbes, and the appearance of Nicolás Medina; administrator of the plantations of *Callancas* and *Yomón*. The record also shows a very interesting letter of explanation written by the Lieutenant of Tumbes to the Corregidor on June 12, 1713, which reads as follows:

"I received your Honor's letter with the order, which I caused to be published on a holiday, as your Honor directed me to do; and, there being within this demarcation no plantations other than those of *Callancas* and *Yomón*, which belong to Bernardo de Aróstegui, a citizen of Guayaquil, where he resides, I had Nicolás Medina summoned, a relative of his mother and the administrator of the plantations, who told me he would go to Guayaquil for the titles. * * *. The plantation produces abundant sustenance for cattle. It has salt works. It is more than fourteen leagues in length, reaching as far as the Yomón river, where there are fields under cultivation and pasture land. * * *. It borders on the watersheds of the sierra (ridge) and it contains houses and corrals near the sea, since the port has three squares of houses in an inlet of the sea, where the salt works are to be found." (D. B. P., No. 92; D. M. P., No. 175).

It is enough to suggest, for an appreciation of the importance of this document, that Callancas is near the line of the Machala, and that the Yomón is the Machala river itself.

5) **Plantation of Sarumilla; Most Important Documents Relating to that Estate (1627 to 1825).**—Of still more importance, and, in our opinion, conclusive, are the papers in the transaction relating to the sale of the Sarumilla plantation in 1789, because of its location in the area lying between Callancas, the watersheds of the Saruma and the surroundings of Tumbes.

Those documents go to show that the Cabildo (*ayuntamiento*, or municipality) of Piura in 1627 made a grant of lands and salt beds to D. Pedro Aguilar, with the approval of the Viceroy of Lima, bounded as follows: "For one side, from the *Machala river*, running

lengthwise to the inlet of Las Cruces, called San Nicolás, a distance of seven leagues from one point to the other, and, from the inlet of Las Cruces, to the town of Tumbes, a distance of the same number of leagues; along one side of this river on the royal road of Zaruma, and, for the rear side, the mountains and *watersheds* of that town (Zaruma)."

In 1689 D. Juan Echevarría, the heir to that property through his mother, Doña Antonia Aguilar, niece of D. Pedro, donated to the College of Jesuits of Guayaquil the lands of Zaruma and Santa Gertrudis and, in his last will and testament, of 1697, gave to it also the salt beds and estates of Callancas and Tumbes.

On the expulsion of the Jesuits and the occupation of their temporal property, the Governor of Guayaquil directed the Corregidor of Piura to make the appraisalment of the property held by the Jesuits in the jurisdiction of Tumbes and to publish the proper notices so that its sale might be proceeded with.

Orders for carrying out the sale were, therefore, issued in 1782 by the Alcalde ordinario of Piura, in the absence of the Corregidor. D. Juan Matías Rodríguez de las Varillas, being commissioned to make the appraisalment, appeared before the Alcalde on the 6th of September of the same year and reported the completion of his duties, designating the boundaries of the estates and salt beds "situated within the limits of the town of Tumbes," as we have just quoted them.

Those steps taken, the proceedings relating to the sale were continued before the Provincial Council of Quito, because the property belonged to the Guayaquil college, in accordance with the provisions of the royal decree of March 27, 1769. Several bidders attended the sale; D. Miguel Olmedo appeared to have submitted the successful bid.

But a separation of the properties, Cayancas, Jumón and Caliguro, was demanded by D. Juan Manuel Mendieta, and Doña María and Doña Josefa Ruiz Díaz, descendants of D. Bernardo Aróstegui, who had married an Aguilar, they being the owners of the estates; and in its decision of June 20, 1787, the Provincial Council of Quito, with the President of the Audiencia sitting as its presiding officer, held that the sale should be restricted to the lands and estates of *Zarumilla* and requested the successful bidder, D. Miguel Olmedo, to accommodate his bid to such reduction, without prejudice, however, to any rights of action he might have against the claimants to

secure all the land granted in 1627 by the municipality of Piura, as above mentioned.

D. Miguel Olmedo, being agreeable thereto, the Provincial Council of Quito confirmed the sale in his favor by its order of September 26th, and, on the 3d of October, the President of Quito ordered the Lieutenant of Machala to proceed to the town of Tumbes in order to establish the purchaser in possession, "notwithstanding that Zarumilla is in *another's jurisdiction*," because the sale was a matter within his cognizance according to royal instructions, although he was to be accompanied by the *Lieutenant of that locality* (Tumbes), who received orders to that effect from the same authority.

On the 12th of February, 1789, the Lieutenants of Machala and Tumbes placed D. Miguel Olmedo in possession of the plantations of Zarumilla and Tumbes, in the jurisdiction of Piura, stating that they gave him possession of "all of the river named Cayancas, from its mouth to the mountain ridge, on the embankment of the said estate, which boundary, formed by the middle of the river, runs along the lands of Cayancas recognized as belonging to the family of Ruiz Díaz * * *; from its mouth to the mouth of the San Nicolás de Tumbes river, Islands of Tembleque, Payana and others; salt beds of Todas Santos, Santa Gertrudis and others; a point named El Atascadero and other estates located within said lands on this side of the aforementioned river Cayancas and the sea coast."

On the following day the proceeding of taking possession was continued as to the lands on the borders of the Tumbes river "running along the border of that river, from a point at which its boundary begins on the upper part, as far as the seashore, passing by the points named Cabullar, where are situated the irrigation canals in the parts disclosed, Corral de la Virgen, Hospital, Cerro Blanco, La Rinconada, El Garbanzal, Pampa Grande, town of Tumbes, with the estate of Cardón, Sol, which is inland, and others that are thus on the border of the river on the side of the aforementioned estate of Zarumilla."

And, in the certificate signed on the 16th, it is stated, in conclusion, that D. Miguel Olmedo stands possessed of the estate with the four general boundaries following: "for its frontage, the shores of the ocean, from the mouth of the *Callancas* to the mouth of the San Nicolás de Tumbes river; for its rear line, the mountain ridge

that leaves the *watersheds of Zaruma*; for one of its sides, the borders of the Tumbes river, and for the other, the whole course of the Callancas river."

The Zarumilla plantation was retained in the family of the purchaser until D. José Joaquín de Olmedo sold it to Citizen José Noblecilla Romero, a resident of the city. The deed of sale, which was executed at Guayaquil on the 4th of August, 1825, stated that the property was situated in the jurisdiction of Tumbes.

It is, therefore, established beyond a doubt that the authorities of Quito and Guayaquil recognized the jurisdiction of Piura as far as the Machala river, the upper boundary of the concession made by the municipality of that city in 1627, and the watersheds of Saruma, to which extended the Sarumilla plantation, sold in 1787, respecting that jurisdiction and making constant acknowledgment thereof in the record of that proceeding (D. B. P., No. 93; D. M. P., Nos. 180, 181).

6) **Memorials and Geographical Descriptions.**—Let us augment this demonstration with evidence afforded by certain memorials and geographical descriptions.

The Associate Judge, D. Juan Romualdo Navarro, in his *Description of the Kingdom of Quito* in the XVIIIth century, refers to the Lieutenantcy of Puná, in the Gobierno of Guayaquil, under the jurisdiction of which, at that time, was the town of Machala. In that work he says that that town was confined on the south by the Corregimientos of Piura and Loja, "the jurisdiction being divided by the Jubones river, which empties at the Payama shoals." The Jubones river is identical with the Jumón, or Machala (D. M. P., No. 196). Later, in 1783, the town of Machala separated from Puná, forming a distinct lieutenantcy dependent on the Gobierno of Guayaquil (D. M. P., No. 193).

The Provincial Deputy for Guayaquil, D. Pedro Alcántara Bruno, in his *Memorial of 1814* concerning the division of that province into judicial districts, estimated its length to be from the northern part of the Lieutenantcy of Canoa to the southern part of that of Machala, bounded by the town of Tumbes in the judicial district of Piura (D. M. P., No. 198).

D. Andrés Balcato, in his *Description of the Province of Guayaquil*, of 1820, says that it bounds on the south with the judicial district of Piura and reaches as far as 3 degrees, 24 minutes, or "the immediate vicinity of the Savanilla, or the Jubones, rivers" (D. M. P., No. 199).

The Ecuadorian geographer *Villavicencio* also recognizes that "the Gobierno of Guayaquil bounds with the Tumbes along the Machala." In the *Torres Mendoza* collection it is stated that the town of Machala was "on the border of a river that they called Los Jubones, three leagues from the sea on the upper river" (Vol. IX, p. 247). And Alcedo, in his *Geographical Dictionary of the West Indies*, says that the province of Guayaquil "extends to the south as far as the town of Machala, or the Payama shoals, and the mouth of the Jubones river, in 3 degrees, 17 minutes, South latitude, and here bounds with the province of Trujillo and jurisdiction of the Corregimiento of Piura, in Peru."

There can be no doubt, therefore, that the *Machala* river, also called the Jumón, Jubón, Jubones, or Savanilla, is Piura's divisionary line with Guayaquil.

SECTION SECOND

INTERNATIONAL BOUNDARIES.

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INTERNATIONAL BOUNDARIES.

CHAPTER I.

The States of Colombia and Peru, and the Provinces of which they were composed.

SUMMARY:

- I. Questions relating to the international boundaries.—1. Method for their study.—2. The Colombian question.
- II. The State of Colombia.—1. Its formation.—2. Guayaquil; its own independence, Peru's protectorate over it, and its annexation to Colombia.
- III. The State of Peru.—1. Its formation and its vicissitudes down to 1827.—2. Maynas.—3. Tumbes.—4. Jaén.

§I. Questions Relating to International Boundaries.

1) **Method for their Study.**—Because of the complete independence of the two States of Peru and Ecuador, it is clear that their boundaries are impressed with the character of *international* and that the controversy in which they are involved must be settled in accordance with international law.

But those States have their foundation in territories, which, since their discovery and conquest, had been dominions of Spain, each separated from the other by boundaries marking out the different entities of government and official administration; and, inasmuch as the land of yesterday is the same as that of to-day, although partitioned after a different system, and inasmuch as the history of the early days is not effaced, although it is of value now only as a precedent for the new order, it is, for this reason, that we have studied

the identity of the territories and boundaries of those entities of the colonial epoch.

We can now enter upon the examination of the questions relative to the present era, and, having to resolve them according to international law, our idea is that the method to be preferred for their study is, for the first stage, to avail ourselves of the light cast on them by the history of the *treaties* and the relations that have subsisted between the contending States, then to supply or make up afterwards any deficiencies in the groundwork of our knowledge by a resort to the *doctrine* of general international law, and that branch particularly which deals with Spanish-America, and, finally, to scrutinize the powers conferred on the *Arbitrator*, the better, in the light of all that has been set forth, to reach a solution of the problem.

The history of the treaties and the relations between the States growing out of the boundary question should be divided into two periods, corresponding, respectively, to the study of the treaties and the relations of Peru with Colombia and of Peru with Ecuador—that is, we shall adopt Peru's classification and refer to the *Colombian* question and the *Ecuadorian* question.

2). **The Colombian Question.**—Although a knowledge of how the boundary question between the two neighboring republics of Colombia and Ecuador unfolds itself would at all times be an advantage to us, this study becomes indispensable from the moment in which Ecuador conceives herself to be the heir to the republic founded by Bolivar and invokes to her aid the Colombian treaty of 1829. Thus it will be seen that the policy adopted by Colombia in her relations with Peru growing out of the boundary question was very different from the attitude assumed by Ecuador, since Colombia has always respected the possessory status of Peru as to Jaén and Maynas and has never resorted to any proceedings for their "restitution."

Let us address ourselves, then, to the so-called Colombian question. But, before doing so, we shall make clear the manner in which the States of Colombia and Ecuador were formed—for two reasons: first, because, it being necessary to study the treaties between those two republics, it is important to ascertain their respective legal capacities to contract and obligate themselves, and, secondly, because it is very important to identify the provinces of which they were composed in order to apply the international law principle of "the sovereignty of emancipated peoples" to the formation of states born out of the dissolution of a colonial empire.

§II. The State of Colombia.

1) Its Formation.—After gaining the battle of Boyacá, Bolívar founded the republic, "one and indivisible," of *Colombia*, by the action of the *Congress of Angostura*, convened by him, which declared in the so-called "law of incorporation," enacted December 17, 1819, that its territory should be "that which was comprised in the ancient Captaincy-general of Venezuela and the Viceroyalty of the new Kingdom of Granada," dividing it into three great departments under the names of Venezuela, Quito and Cundinamarca. On August 30, 1821, the Congress assembled at Rosario de *Cúcuta*, ratified the Constitution of the Republic of Colombia, and declared also that its territory "is the same as that embraced in the ancient Viceroyalty of New Granada and the Captaincy-General of Venezuela" (Art. 6th), and that "the towns within the area specified which are still under the Spanish yoke shall, whenever they liberate themselves, become a part of the Republic, with equal rights and representation with all the others included therein" (Art. 7th).

From this the Republic of Ecuador derives the rights she claims, holding herself forth as the successor of Colombia, without taking into account the fact that the Congress of Angostura was composed only of Venezuelan representatives and but one from Granada, that of Casanare; that in the Congress of *Cúcuta* the provinces of the ancient Audiencia of Quito were not represented, and that neither Bolívar nor his congresses could impose their will upon the towns emancipated or to be emancipated, to obligate them to form a part of the Republic of Colombia.

The entry of General San Martín into Peru with his Argentine and Chilean troops in September, 1820, contributed powerfully to the generalization of the insurrection, inasmuch as the Spaniards had to concentrate their forces and the Americans saw the opportunity to overcome the principal center of resistance. *Guayaquil* declared her independence in October, 1820, placing herself under the protectorate of General San Martín, known as the Protector of Peru. *Jaén* emancipated herself from Spain in 1821, uniting with Peru and fighting along with the Peruvians. *Panamá*, at the other extreme of the ancient Viceroyalty, proclaimed her independence and attached herself to the Republic of Colombia.

Such was the status of things when Simon Bolívar, President of the republic, set forth from the capital to put an end to the

Spanish dominion and unite with Colombia, willingly or by force, the southern towns of the Viceroyalty of Santa Fe. The battle of Pichincha being won by General Sucre on the 24th of May, 1822, the inhabitants of *Quito* attached themselves to Colombia, and, shortly afterwards, *Cuenca* and *Loja* were incorporated therein. "A decree of Bolivar," says the Ecuadorian historian, Cevallos, "confirmed those acts of adherence, organizing the provinces of *Quito*, *Cuenca* and *Loja* into the *Department of the Equator* (*Departamento del Ecuador*), the government of which was committed to General Sucre." Restrepo, former Colombian minister, also states in his history of that republic: "The provinces of *Quito*, *Cuenca* and *Loja* comprised the vast and populous *Department of Ecuador*; Sucre, promoted to General of Division, was chosen to govern it" (M. P., vol. III, p. 167).

The Government of *Ecuador* appears, then, in history as that of a department of the one and indivisible Republic of Colombia, and was composed of three provinces: *Quito*, *Cuenca* and *Loja*. The province of *Guayaquil* preserved its independence; that of *Jaén* declared its union with Peru.

2) **Guayaquil; Its Own Independence, Peru's Protectorate Over It, and Its Annexation to Colombia.**—On the proclamation of *Guayaquil's* independence, by a general vote of the people in accordance with the act of October 9, 1820, D. José Joaquín Olmedo was elected governor of the province, and, under his presidency, a superior governmental junta was instituted with powers prescribed by the ordinance enacted by the General Provincial Assembly, convoked for that purpose.

On the 30th of December of the same year, the new government of *Guayaquil* entered into an agreement with D. Tomás Guido, acting under a commission from General San Martín, the first article of which reads: "The Province of *Guayaquil*, by reason of its situation as the boundary between the States of Peru and Colombia, shall maintain an independent government under the provincial constitution, ratified by the concurrence of the towns of the province; until the States of Peru and Colombia shall be liberated from the government of Spain, whereupon it shall be at full liberty to attach itself to the State it may find best suited to its needs." In the articles following, the province of *Guayaquil* is declared to be, during the period of the war, "under the protection" of the Captain-General of Peru, who was also to have command of its troops.

On the 23d of February, 1821, General Mires "intimates" to the Government of Guayaquil, in the name of Bolívar, that it ought to unite itself with Colombia, of which it was a part, just as, it is said, intimation was given to Quito. Governor Olmedo replied that the province "had been declared at liberty to attach itself to whichever great union it found to be best suited to its needs among those to be formed in South America."

On the 15th of May, General Sucre secured from the Governmental Assembly its promise to recommend to the electoral board of the province its union with Colombia, and that the province place itself under Colombia's auspices and protection. In reporting that transaction to his government, the General stated that he had not been able to coax any more out of Guayaquil, and that the important move to be made then was to take steps to bind the interests of Guayaquil to Colombia and help along the liberation of Quito.

On the 2d of January, 1822, Bolívar writes from his quarters at Cali to the Government of Guayaquil, announcing his arrival with troops, and demanding to be informed, before his entry into the capital, that Guayaquil had proclaimed its union with Colombia, because the territory of Guayaquil belongs to that State, and, further, he says, "a province has not the right to separate itself from a union to which it belongs, and it would be a violation of the laws of nature and policy to permit an intermediate province to become a battle field between two strong States."

Bolívar's intention to obtain Guayaquil at all hazards was clearly shown by those words, and this explains what we shall have to say later concerning the relations of Colombia with Peru and the course of their diplomatic negotiations.

Governor Olmedo went before General San Martín, Protector of Peru, with his complaint and the latter wrote to Bolívar from Lima on the 3d of March, 1822, protesting, in terms of great nobility and courtesy, against "the serious intimation" he had given to Guayaquil. "I venture to say to you that it is not within our destiny to draw the sword in any undertaking that would not be a confirmation of the right we have by battle achieved to be acclaimed the liberators of the country. Let us leave Guayaquil to consult her destiny and to consider her own interests, in order freely to unite herself with the section most advantageous."

But, after the battle of Pichincha, Bolívar renews his importunities. He enters Guayaquil and issues a decree on the 13th of

July, 1822, in which he assumes the political and military command and convokes the representatives of the province.

After much deliberation, the electoral junta of the province, on the 31st of that month, proclaims its union with Colombia, and, on the 3d of August, Bolívar decrees that the province of Guayaquil shall constitute the Southern Maritime Department of that Republic.

General San Martín wrote to Bolívar on the 29th of the following month, announcing his intention to return to Chile as soon as the Peruvian Congress convoked by him had assembled, and expressing his sentiments as follows: "With regard to the incorporation of Guayaquil, permit me to say, General, that the decision of this important matter did not lie with us; the war ended, the governments would have settled it without the embarrassments which may now result to the interests of the new States of South America."

The foregoing is set forth in detail in the documents contained in Exhibit No. 1 to the Memorial of Peru.

In résumé: The annexations of Quito, Cuenca, Loja and Guayaquil to Colombia were accomplished by acts of union, more or less voluntary and solemn on the part of those provinces, coincident with their occupation by the troops of the republic. In Guayaquil remained the germs of future discord.

§III. The State of Peru.

1) **Its Formation and Vicissitudes Down to 1827.**—The Vice-royalty of Lima being the most ancient center, the best organized and most closely identified with Spain, was the scene of the most determined opposition to the revolutionary movement. In aid of that movement, General San Martín appeared off the coast at the head of an expeditionary force of Chilean troops, and disembarked in September, 1820. He penetrated the Peruvian territory, exciting and generalizing the Peruvian insurrection, and finally crushed the dominion of Spain.

On the 12th of February, 1821, at Huaura, General San Martín promulgated a "provisional ordinance" for the government and administration of the new State of Peru, creating a central authority to serve until it might be reconstituted in some form to be determined on by the will of the people, and divided the territory into

departments and districts, under the direction, respectively, of presidents, or prefects, and sub-prefects. The General remained in supreme control of the government, under the title and rank of *Protector* of Peru.

On the 28th of July, 1821, a few days after General San Martín's entry into Lima, he there proclaimed, with all solemnity, the independence of Peru. San Martín continued the war, with varying fortunes, and, when he thought the time ripe, convoked the congress which was to frame the constitution of the Peruvian state. The constituent Congress assembled on the 20th of September, 1822, whereupon San Martín renounced his discretionary powers and returned at once to Chile, notwithstanding the entreaties of the congress that he remain at the helm.

The Congress adopting the republican form of government, established first by the act of December 17, 1822, the bases for the constitution, and, soon afterwards, on those bases, framed the constitution that was sworn to and promulgated on the 12th of November, 1823.

As soon as General San Martín had taken his departure, the Congress appointed a *governing junta*, composed of three persons, but shortly afterwards that *junta* was abolished and the executive power entrusted to a single individual, Riva Agüero, with the title of *President*. The fortunes of war went more and more against the Peruvians, however, and finally they called on Bolívar for aid. On the 18th of March, 1823, Riva Agüero entered into a convention with Bolívar, who promised to send 6,000 men, and, on the 4th of May following, the Congress resolved to invite him to conduct the war in person. This Bolívar did, having first procured the authority of the Colombian Congress. He entered Lima September 1, 1823, after its abandonment by the Spanish, who had been in possession since June 19th.

The Congress, by its act of the same month of September, entrusted to Bolívar "the salvation of Peru," investing him with *unlimited authority*, subsequently confirmed by the act of February 17, 1824, suspending all constitutional provisions that might conflict with the dictatorial powers conferred on the Liberator.

Bolívar undertook the campaign against the Spaniards, achieving the victory at Junín on the 6th of August, 1824. He then returned to Lima, where political affairs claimed his attention, leaving the command of the army in the hands of General Sucre, who, on the

9th of December, won the battle of Ayachuco. Those two battles decided the fate of Peru's independence.

Bolívar thereupon appeared before the Congress and resigned "the supreme power it had placed in his hands." That body, however, confirmed him in those powers, and, by act of February 10, 1825, conferred on him the authority to suspend all constitutional provisions, laws and decrees that might be opposed to the demands of the public good, and, in the exercise of that authority, to carry into effect all measures essential to the organization of the republic.

Distinguished by the further titles of *Father and Savior of Peru*, Bolívar continued at the head of the government of the republic until September 3, 1826, when he took ship at Callao to return to Colombia. His departure and the political events in Colombia and Peru—arising in the latter republic out of the discontent produced by Bolívar's constitution—disturbed the good relations theretofore existing between the two countries. Later we shall discuss that situation more fully.

Let us now see what became of the territories claimed by Ecuador when the State of Peru was formed and recognition was accorded her, as such, by the State of Colombia, and while such good relations were maintained between those states.

The "provisional ordinance" decreed at Huaura by General San Martín on the 12th of February, 1821, divided the Peruvian territory into *departments*, with subdivisions into *districts*, the government of the former being committed to presidents or prefects, while the districts were to be administered by sub-prefects, or district governors.

It was into one of those departments, that of *Trujillo*, that were combined the districts of Piura, Lambayeque, Cajamarca, Chota, Huamachuco, Pataz, Chachapoyas, Maynas and Jaén, the respective governments of which were, on the 5th of December, 1822, entrusted to the persons named by the President of Trujillo, the Marqués de Bella-Vista, in his note of that date transmitted to the Secretary of War and Navy (D. M. P., vol. VII, p. 301).

Article I of the Peruvian Constitution of 1823 declares that "all the provinces of Peru, united into *a single body politic*, form the Peruvian nation." Integral parts of that single body politic were the aforementioned Gobiernos of Maynas and Jaén as well as Tumbes, which belonged to that of Piura.

2) **Maynas.**—The Gobierno and Comandancia general of Maynas was a dependency in fact and law of the Viceroyalty of Peru, as we have shown, down to the moment of the Peruvian independence.

The insurrections in Jeberos, La Laguna and Napo in 1809 were not against Spain but were by way of protest on the part of the Indians against the particular persons in government over them, under whose rule they had suffered abuse and violence of every description (D. M. P., Nos. 113 and 125.) The slight disorders at Quijos in 1812 occasioned by the appearance of some of the Quito insurgents were easily suppressed by a detachment from the veteran company of Maynas.

These very facts show that those territories, especially Quijos, continued under the authority of the Viceroy of Lima and of the Governor of Maynas, for the troops sent from Maynas to quell the disturbances in Napo were despatched by the Viceroy of Lima; the expenses of the prisoners taken on that occasion were charged against the treasury of Maynas, and the Viceroy himself approved the action taken by the Governor of Maynas in subduing the Quito insurgents who had entered Quijos (D. M. P., Nos. 117, 118; D. B. P., No. 57).

The independence of Maynas had its birth in the movement resulting in the independence of the entire Viceroyalty of Peru, proclaimed at Lima July 28, 1821. In August of the same year, the cabildo, or municipality of Moyobamba, communicated the fact of Maynas' independence to Governor Manuel Fernández Álvarez, who called together at Pebas the principal Spanish officers to confer upon the situation. At that conference they decided to abandon the territory to the insurgents (D. M. P., vol. III, p. LXVI).

The new Peruvian government had to engage in a struggle with the royalists in that locality and the inhabitants adherent to the cause of independence fought side by side with the party which called itself the peace party of Maynas (D. M. P., vol. VII, app. 7).

On the organization of the government of Peru, its administration embraced the government of Maynas in the department of Trujillo, exercised, in December, 1822, by D. Nicolás Arriola, as shown by the aforementioned note of the president of that department to the Marqués de Bella-Vista (D. M. P., vol. VII, p. 301).

The government of Maynas, therefore, continued to form a part of Peru on her appearance as a state, its inhabitants participating by declarations and acts in the common struggle for Peruvian independence, and manifesting no desire whatever to unite themselves with Colombia.

3) **Tumbes.**—We have already seen that under the colonial régime Tumbes was always a dependency of the Corregimiento of Piura, and, therefore, of the Viceroyalty of Peru.

On the creation of the Intendency of Trujillo, it was divided into districts, one of these being Piura (1784), in which was embraced Tumbes; and, within the demarcation of Piura, Tumbes remained when General San Martín made his entry in September, 1820.

Trujillo and Piura were the first cities to declare themselves independent, Tumbes at once adhering to the declaration made by Piura, as evidenced by the minute book in which were recorded the proceedings of the municipality.

The minutes of the proceedings on the 7th of January, 1821, show that, at a meeting of the municipality of the town of San Nicolás de Tumbes, "a dependency of the city of Piura," called for the purpose of considering the official communication dated the 4th of that month from the governing junta of that city and accompanying papers, news was received that Piura's "independence and liberty have been declared and proclaimed." There was read at the meeting the proclamation of the 29th of the previous December by the Marqués de Torre-Tagle, Governor-Intendent and Commandant-General, which was among the papers accompanying the said communication, and "exhorted the people subject to its jurisdiction to declare and proclaim their liberty and independence and their detestation of despotism and tyranny." And, after giving expression to the gratification with which the news and the order were received, the meeting resolved "to make public manifestation thereof with the solemnity due so fitting a declaration of independence," and proceeded to arrange the festivities in celebration of the momentous event (D. M. P. No. 200, and Plates 1 to 3 of vol. VI).

The declaration of the independence of Tumbes anticipated that of Guayaquil (October 9th) and the general declaration at Lima of the independence of Peru (July 28, 1821); Tumbes followed in its emancipation the destinies of Piura, as it had followed that province under the colonial régime.

By virtue of the decree of Huaura, February 12, 1821, Piura became a district of the Department of Trujillo, and Tumbes, being embraced in that district and department, remained in Peru; it was among the first to declare and proclaim the independence.

4) Jaén.—The province of Jaén, physically enclosed within the provinces of Peru and united with her in its sentiments, interests and constant relations, emancipated itself and entered into the struggle as an integral part of Peru, following the revolutionary current set in motion by the entry into Peruvian territory of General San Martín.

At an assemblage of the populace of the city of Jaén "and the principal towns of Colasay, Chirinos, San Ignacio and Tomependa" on the 8th of May, 1821, it was resolved at once to elect D. Juan Antonio Checa as Governor *ad interim*, and, at a subsequent meeting held on the 4th of June in the same city, which was attended, in addition to its own citizens, "by many of the leading citizens of the other towns," "the country was proclaimed and the glorious independence declared," and the appointment of Checa ratified. On the 11th of the same month those events were communicated by Checa to General San Martín through the medium of the Governor of Lambayeque and of the President of Trujillo, Checa submitting to the General an account of his actions and asking for assistance. His superior officers congratulated him cordially, recognizing him as governor of the district or province of Jaén; the Minister Monteagudo informed him that in due course he would forward instructions as to the reforms deemed best to be introduced.

The independence of Peru solemnly proclaimed at Lima on the 28th of July, General San Martín was named Protector, whereupon, through the medium of Governor Checa, the tidings were conveyed to Jaén and the towns conformed with the greatest enthusiasm. It is shown in the minutes of the proceedings of those towns that the town of San Ignacio declared for General San Martín and, on the 16th of September, 1821, with heart-felt rejoicing, proclaimed him Protector. The town of Cujillo also swore obedience to him "with the same degree of gratification already manifested in its declaration of independence," and a Mass was held in thanksgiving on the 3d of October (D. M. P., No. 157).

D. Pedro Checa figures as Governor of the District of Jaén in the memorandum of December 5, 1822, setting forth the personnel of the districts of the Department of Trujillo, transmitted by its

President, the Marqués de Bella-Vista, to the Secretary of the Department of War and Navy (D. M. P., vol. VII, app. 9).

Jaén was constant in support of Peru in the struggle for independence, being one of the provinces "united into a single body politic," which, according to the constitution of 1823, formed the Peruvian nation.

Let us observe now how the boundary question develops in the relations between the States of Colombia and Peru constituted and organized as above set forth.

CHAPTER II.

Treaties and Relations of Peru with Colombia.

SUMMARY :

- I. The Mosquera-Monteagudo treaty of 1822 (ratified 1823).—1. Instructions of the Government of Colombia to its Plenipotentiary.—2. Conferences and negotiation of the treaty.
- II. Representation of Jaén and Maynas in the first Peruvian Congress.—1. Explanations with respect to Maynas.—2. Colombia's assent as to Jaén.
- III. A most important letter from Bolívar in 1822.—1. Concerning the annexation of Guayaquil.—2. With respect to Jaén, Maynas and Tumbes.
- IV. Galdeano-Mosquera convention of 1823 (not ratified).—1. Proposals of the Plenipotentiaries.—2. Matters agreed to by the Plenipotentiaries, and legislative disapproval thereof.
- V. Colombian law of 1824 concerning territorial division.
- VI. Bolívar's policy in Peru; his action with respect to those matters.
- VII. Bolivian Constitution of 1826 and its nullification in 1827.
- VIII. Résumé of the boundary question down to 1827.—1. The question in general.—2. The question in its relation to Jaén.—3. The question in its relation to Maynas.—4. The question in its relation to Tumbes.

§I. The Mosquera-Monteagudo Treaty of 1822 (Ratified 1823).

I). Instructions of the Government of Colombia to Its Plenipotentiary.—The sessions of the Congress of Cúcuta concluded, Bolívar, in the beginning of October, 1821, appointed Senator D. Joaquín Mosquera Minister Plenipotentiary near the Government of Peru, charging him especially to negotiate with that government a treaty of alliance for the common defence.

The Colombian Minister of Foreign Relations communicated to Mosquera the appropriate instructions on the 11th of December, cautioning him, above all things, to insist with the utmost firmness that the province of Guayaquil should remain incorporated as a part of the Colombian territory "without permitting the slightest doubt to appear as to whether or not it should be so incorporated in fact and law" (D. M. P., No. 4).

In those instructions, says Sr. Valenzuela, in the *Memorial* he prepared by order of the Government of Colombia in 1893, Sr. Gual invoked the principle of *uti possidetis* "in its true significance," and then directed Sr. Mosquera to propose the following to the Peruvian Government: "The two contracting parties bind themselves not to enter into any negotiations with the government of His Catholic Majesty on the basis of the respective territories as they were delimited in the year 1810—that is, the territorial extent of each captaincy-general or viceroyalty in America—*unless* by laws enacted subsequently to the revolution, as has happened in Colombia, there are incorporated into a single state two or more captaincies-general or viceroyalties" (D. M. P., vol. VII, p. 102).

That is to say, the negotiations on the part of Colombia began on the basis of the *doctrine of colonial boundaries, insofar as they might not have been altered by law subsequently to the revolution*—a reservation most important to Colombia, inasmuch as, without it, the union of the Viceroyalty of Santa Fe with the Captaincy-general of Venezuela could not be maintained; nor, having been a dependency of the Viceroyalty of Lima, could the union with Guayaquil, and it was to that end that the instructions for negotiation of the treaty with the Government of Peru were chiefly directed, since the inclusion of Venezuela was of no interest to Peru.

2) **Conferences, and Negotiation of the Treaty.**—Mosquera arrived in Peru in the month of May, 1822, and at once began his conferences with the Minister of Foreign Relations, D. Bernardo Monteagudo. No obstacles were encountered, says Sr. Valenzuela, until they arrived at the discussion of the article recognizing the integrity of Colombian territory and the inclusion therein of the province of Guayaquil. The Peruvian negotiator made the point that Peru having recognized as *independent* the governing junta of Guayaquil, it would be inconsistent to accept or consent to the proposal that that territory should be aggregated to Colombia. "We must confess," adds Valenzuela, "that the Peruvian negotiator was *right* on that point. What *we wonder at* is that he did not call to his aid the circumstance that, in conformity with the royal order of July 7, 1803, the Gobierno of Guayaquil became a *dependency of the Viceroyalty* of Peru and not of that of Santa Fe, a dependency declared by the royal order of April 23, 1807, to be *absolute*; he proposed that Guayaquil be left *at liberty* to incorporate herself in Colombia or in Peru. * * * The two

negotiators, therefore, did not succeed in reaching an agreement, since neither would yield his claim, and so decided to withdraw from the discussion the point as to the exact demarcation of the territorial boundaries, reserving it for a special agreement thereafter" (D. M. P., vol. VII, p. 102).

On the 6th of July, 1822, however, Mosquera and Monteagudo concluded at Lima a treaty of amity and alliance between the two countries; the 9th article stipulated: "The demarcation of the exact boundaries that are to divide the territories of the Republic of Colombia and the State of Peru shall be settled by a special convention after the next constituent congress of Peru shall have authorized the executive power of that State to regulate this point; and any differences that may arise in the matter shall be resolved by conciliatory and peaceful measures, as is proper between two allied and sister nations" (D. B. P., No. 3).

That treaty (of 1822) was ratified by the Congresses of Peru and Colombia in 1823.

When it was signed by the plenipotentiaries, Guayaquil still preserved her independence, Jaén had united with the new Government of Peru and Maynas continued in its dependence on that government. The treaty, therefore, maintained the *status quo* and left for a later occasion only the *definite fixing* of the boundaries separating the territories of the two States; the question as to Guayaquil, the only one discussed, was left undecided, and there was mutual recognition by the States as then constituted.

§II. Representation of Jaén and Maynas in the First Peruvian Congress.

1) **Explanations with Respect to Maynas.**—The Supreme Delegate of Peru, the Marqués de Torre-Tagle, published on the 26th of April, 1822, the "decree regulating elections" to be held for the formation of the constituent Congress. Article 9 of the regulations fixed the number of representatives apportioned to each department on the basis of the census of population published in the Official Guide of Peru for the year 1797.

The Minister Plenipotentiary of Colombia at Lima, D. Joaquín Mosquera, addressed a note to the Peruvian Minister of Foreign Relations on the 20th of June, 1822, in which, after informing the Secretary that the inhabitants of Quijos and Maynas were to be

convoked for the elections to the Colombian Congress in accordance with her constitution, and stating that those towns did not appear in the Official Guide of Peru for 1797, as they had formed a part of New Granada since 1818, the Minister asked him to be good enough to "explain" clearly to the writer the interpretation in which article 9 of the regulations referred to should be accepted, for doubtless, he said, the explanation would be sufficient to "obviate the necessity of reclamations" in that regard (D. B. P., No. 2).

On the 6th of July, the date on which the aforementioned treaty was concluded, Mosquera acknowledged receipt of the letter sent to him the day before by Minister Monteagudo, wherein the latter informed the Plenipotentiary that the Supreme Delegate had agreed to issue an order to the President of Trujillo, directing that "the population of Quijos and that of Maynas located on the other side of the Marañón river should not be included in the computation for the elections of representatives to the next Congress," and Mosquera expressed himself as satisfied (D. B. P., No. 2).

The Government of Peru could have answered that Maynas and Quijos had belonged to the Viceroyalty of Lima from the time of the Royal Decree of 1802; but, as explained by Valenzuela, that was not done because of the ignorance of that decree on the part of the Protector of Peru and his Minister, both of them being foreigners and but recent arrivals in that country (D. M. P., vol. VII, p. 104).

However, it is evident that Mosquera made no formal demand in that connection, contenting himself with a mere request for an explanation, couched in the most courteous terms; and he accepted the explanation offered—that the population "on the other side of the Marañón" were not to be computed in the apportionment of the representatives to be elected. The incident goes to show: 1st, that Colombia's representative did not aspire, on behalf of his country, to *all* of the territory of Maynas that had belonged to the Audiencia of Quito down to the time of the Royal Decree of 1802, but was satisfied with the section north of the Marañón, and, 2d, that the Government of Peru, without, on the one hand, recognizing in Colombia any rights whatever over that *northern section*, on the other, committed itself only to the extent of *abstaining from the computation* of the population of that section in apportioning the congressional representation, proceeding at once with the computation in the southern section of that territory, and thus securing to Maynas a representation in the coming Congress, whatever may have been the number of its inhabitants.

Colombia, then, recognized the rights of Peru with respect to Maynas as far as the Marañón, and a discussion as to whether the divisionary line was to be established at that river, or beyond, being an invasion of the *boundary question* reserved by the treaty of July 6th for settlement in a special convention, the Government of Peru naturally did not wish to go into it at that time merely for the purpose of determining the proportion between the number of representatives and the number of persons represented in the approaching congressional elections.

On the assembling of that Congress, however, the Government sent in a report of the incident, as well as of that which took place with reference to Jaén; whereupon, on the 23d of October, 1822, the Congress resolved "that all differences in the matter of *boundaries* should be settled by the Congresses of the two States, and that, in the meanwhile, all provinces over which there is any dispute shall remain *in the status* occupied at the time of the victory of Pichincha" (D. M. P., No. 3).

2) **Colombia's Assent as to Jaén.**—On the 22d of July, 1822, General Sucre, as Intendent of the Department of Quito, orders the Governor of Jaén to proclaim the Constitution of Colombia throughout the province and cause it to be sworn to, giving him, besides, instructions concerning the elections of deputies and senators; but, on the 7th of August following, the General himself writes to him that "having observed in the *Gaceta* of Lima that that province is convoked to send deputies to the Congress of Peru," he *suspends* his orders and calls on him for a report as to the situation, so that all possible offence may be avoided which might disturb the intimate relations existing between the two republics.

The Peruvian Minister of State, on the 14th of August and 17th of September, calls on the Secretary-General of the Liberator of Colombia to prevent the continuance of the activities of the Quito authorities in exacting the oath to the Colombian constitution and seeking to intervene in the district of Jaén, "as that district belongs to the State of Peru in whose possession it now is."

On the 7th of October, 1822, General Sucre writes to the President of the Department of Trujillo:

"It is true that I sent the Constitution of the Republic to the Governor of Jaén to the end that it should be sworn to in that jurisdiction, in view of the fact that Jaén is a province of Colombia, and bearing in mind that the conditions under which it was united to

Trujillo by the bondage of Quito ceased to exist after the 24th of May. * * * I sent that communication to Jaén prompted by my sense of duty, but the *Liberator*, having been disposed to *suspend that action* for the present, I so informed the Governor of Jaén in order that he might stay proceedings pending final decision of the matter."

He shared, then, in the error of believing that because Jaén had been dependent on the Presidency of Quito under the previous régime (referred to above as the régime of bondage in contradistinction to that of freedom), when the province of Quito was emancipated, it necessarily carried with it the province of Jaén, and that in that wise Jaén became emancipated and voluntarily attached to Peru before that state had achieved its liberty. Let us see, however, how Sucre and Bolívar respected the rights of Jaén, assenting to its independence with respect to Colombia, and refraining from any opposition to its taking part in the elections, as it did, to the first Peruvian Congress (D. M. P., 2 and 3).

§III. A Most Important Letter From Bolívar in 1822.

Bolívar's letter of August 3, 1822, to General Santander, who, during the absence of the former, had remained at the head of the Government in Colombia, is of the highest importance, in that it makes clear the events of that period, confirms the following status in respect to the territories in dispute, and enables one to understand the course that had to be pursued in the negotiations between Colombia and Peru as well as the spirit of their treaties, including that subsequently signed in 1829. In volume II of the Final Memorial of Peru a photographic reproduction of that letter is inserted and certified to by the Spanish Minister to Colombia, Sr. Arroyo.

1) **Concerning the Annexation of Guayaquil.**—The letter was written at Guayaquil on the date of Bolívar's decree constituting that province a part of the Maritime Department of the South, of the Republic of Colombia.

Bolívar begins the letter by informing General Santander that he is sending Captain Gomez to him with the treaty concluded with Peru (July 6th), having given the Captain orders to acquaint him fully with the situation as to Peru and Guayaquil.

"Gomez," he says, "bears with him the pleasing news that the negotiations at Guayaquil have been carried through with acclamation and in the most orderly manner possible. All the partisans

of the independence idea and of Peru have taken flight aboard the Peruvian fleet. Olmedo was the last to go, and left with me a letter. * * * All these gentlemen were treated with admirable consideration; not a single vexation has transpired since I have been here. Their departure taken, no inquiry has been made into the motives of their flight; nor has demand been made for their property, or even for their families."

It would seem, therefore, that the adhesion of Guayaquil to Colombia was not unanimous. There were at Guayaquil partisans of the plan of preserving its independence or of uniting at once with Peru. The leaders among them, members of the governing junta, had been menaced and forced to fly under threats against their persons, families and property, which threats, however, by reason of their flight, had not been carried into effect. The annexation was not secure, as we are going to see.

"It is very necessary that I should remain in this country for some time," adds Bolívar, "as much because of what is taking place as because of my desire to await the results of Peru's next campaign."

He then speaks of Quito, referring to what General San Martín had told him of the desire of the lawyers of that city to form a state independent of Colombia, and adding, as to himself, that there were ranged against him the entire parties of the crown and tonture.

He insisted upon the necessity of his sojourn in the south. "Here," he says, "all is fresh and new. *We are unknown* except by reputation, and, if the truth be told, it is a liberal *conquest* that we have just achieved over this country; but in four days one cannot conquer the hearts of the people—the only safe foundation of power. I assure you, in all frankness, that in spite of the *apparent tranquillity* prevailing in the south, this country may be likened to Chimborazo, cold on the exterior yet blazing beneath. All the power I possess is needed by us *in order that our system may take root* in this country. You can well understand that there have been *many obstacles* to overcome and that only the prestige of victory, the use of *force* and the happening of *momentous events* could have facilitated our triumph over such obstacles. Moreover, *it is not enough to conquer; it is necessary to hold*. * * * At the center of government I am not needed, because you and the Ministers can carry it on better than I * * *; for the timebeing I am useful here, and later, perhaps, I shall be in Venezuela."

The foregoing paragraphs with the words we have italicised reveal Bolívar's uneasiness concerning the adherence of Guayaquil, and even Quito, to Colombia (for there the Colombians were held to be foreigners), also the manner in which they had imposed themselves on the country, and the great lengths to which they had to resort in order to consolidate the conquest.

Bolívar gives an account of the movements of his troops, writing from Guayaquil that "the country is *unsafe* and its being *garrisoned* ought to be very *favorable* to us." He then speaks of projected tours through the country and of reforms in the annexed provinces.

2) **With Respect to Jaén, Maynas and Tumbes.**—The letter concludes with the following paragraph, which, as stated in the Peruvian Memorial, Peru ought to quote in letters of gold:

"Let it be understood by you," writes Bolívar to General Santander, "that the *Corregimiento of Jaén has been occupied by the Peruvians, and that Maynas belongs to Peru by virtue of a royal order of very recent date; that it also is occupied by the forces of Peru. In any event, we shall have to abandon Jaén for Maynas and, if possible, advance our coastwise boundaries beyond Tumbes. I shall inform myself of everything during the tour I am going to make and will impart my views to the Government.*"

There appear in this paragraph first two statements of fact: the *occupation* of Jaén and Maynas by the Peruvians and the recognition that Maynas *belongs* as of right to Peru, by virtue of a royal decree of very recent date (alluding to the Royal Decree of 1802); and, secondly, the revelation of a *project* to abandon Jaén for Maynas and advance along the coast beyond Tumbes. All this from the mouth of an unimpeachable witness, the one person of all others capable of converting his projects into reality:

Occupation of the Corregimiento of Jaén by Peru!—yes; but not under title of conquest by the troops of General San Martín, but because the inhabitants of Jaén had made themselves Peruvians, voluntarily recognizing the new government and fighting for the common country along with the other Peruvian provinces.

The two facts afterward invoked by Ecuador in justification of the annexation of Guayaquil to Colombia—its voluntary acquiescence and its emancipation by Colombian troops—were applicable to Jaén also, not in favor of Colombia, however, but in favor of Peru. In any event, the fact of Peru's being *in possession* of the

Corregimiento of Jaén when Bolívar wrote his letter is abundantly proven by that testimony.

This possessory status was respected by the treaty of July 6th which Bolívar forwarded to the Colombian government; and Bolívar himself confirmed it, forbidding General Sucre, as we have seen, to proclaim the Colombian constitution in Jaén, and ordering him not to prevent the election of the Peruvian deputies.

With respect to *Maynas*, the statement in Bolívar's letter that "it is *occupied* by the forces of Peru," is coupled with the acknowledgment that *Maynas* "*belongs* to Peru by virtue of a royal order of very recent date," which indicates, besides, that he had knowledge of the Royal Decree of 1802, a thing that has been denied, but which it is important to keep in sight so that the spirit of the treaties may be comprehended.

Why, notwithstanding this, did Mosquera oppose the inclusion of the population north of the Marañón in the computation for the apportionment of the Peruvian deputies? Because he was preparing the way to secure by compromise a *part* of *Maynas*, which Bolívar *knew*, and it may well be believed Mosquera knew also, belonged in its entirety to Peru by virtue of that Royal Decree.

The *designs* of Bolívar to accomplish by future negotiations the extension of the Colombian boundaries is clearly revealed in that letter; to have them run along the Tumbes coast and take in *Maynas*, proposing to abandon Jaén to Peru, which union, born of the intimacy of their traditional relations and already authorized by the King during the colonial régime, was made effective by the popular will and by the war of independence. Bolívar believed that Peru, in return for the peaceful possession of Jaén, a populous province so intimately a part of her life, would submit to the cession of territories more distant and but scantily populated, and in which at that time her interests were not so important.

By this is explained the policy followed by Colombia in the negotiation of her treaties and conventions with Peru on the subject of boundaries.

§IV. Galdeano - Mosquera Convention of 1823 (not ratified).

1) **The Proposals of the Plenipotentiaries.**—On the 3d of December, 1823, the Plenipotentiary of Colombia, D. Joaquín Mosquera, addressed a note to the Peruvian Minister of State informing him that three months had passed since he had returned to Lima to settle the boundary question and that he was anxious to bring it to a conclusion because he was desirous of attending the convening of the Senate to which he belonged. To that end he submitted the following "*Draft of a Convention* between the Republics of Peru and Colombia settling the demarcation of the boundaries separating their respective territories. Both parties recognize, as the boundaries of their respective territories, the same that were possessed in the year 1809 by the Viceroyalties of Peru and New Granada, from the disembogement of the Tumbes river in the Pacific ocean to the territory of Brazil" (D. B. P., No. 4).

The Colombian Government, then, commences to put in practice Bolívar's plan. Departing from the principle that each republic shall *respect the other's territories*, that is to say, those belonging to them or of which they are in possession, Colombia seeks to extend the demarcation of *boundaries* advancing along the Tumbes coast and reaching as far as Brazil, making no mention of Jaén.

It was well known at Guayaquil that Tumbes, with its district, belonged to the province of Piura as far as the Machala, as we have shown, and as could have been fully proven to Bolívar by D. Joaquín Olmedo, the President of that government, by merely exhibiting his titles to the plantation of Sarumilla, if the Colombian annexationists had not forced him to leave the city. To fix on the mouth of the Tumbes river as the point of departure for the divisionary line, was equivalent to taking for Colombia the area lying between that river and the Machala, including the town of Tumbes itself, which had always belonged to the Viceroyalty of Peru, and to assuming, without so stating, the annexation of Guayaquil. The fact that Guayaquil belonged to that Viceroyalty and the weakness of the annexation constituted Bolívar's principal concern.

To propose Brazil as the common frontier of Colombia and Peru on the east signified, also without so stating, an attempt to partition the territory of Maynas between the two republics, ignoring the Royal Decree of 1802, by virtue of which that territory *belonged*

in its entirety to Peru, as Bolívar had stated to the Colombian government in his letter of 1822.

D. José María Galdeano, Plenipotentiary of Peru, replied to Mosquera, accepting the first part of his proposal and objecting to the second, which read "from the disembogement of the Tumbes river in the Pacific ocean as far as the territory of Brazil," for, to fix the boundaries concretely, there needed to be a more careful study of the matter, and perhaps the appointment of a special commission, to the end that no injury might result to either of the two republics (D. B. P., No. 5).

2) **Matters Agreed to by the Plenipotentiaries, and Legislative Disapproval Thereof.**—The amendment offered by Mosquera accepted, both representatives signed at Lima, on the 18th of December, 1823, the convention bearing their names, agreeing, in order to avoid delay in the matter, as follows: "1st, both parties recognize as boundaries of their respective territories the same that were possessed in the year 1809 by the former Viceroyalties of Peru and New Granada; 2d, this convention shall be ratified by both governments as soon as ratification may be had by their respective legislatures." * * * (D. B. P., No. 6).

The convention, however, was not ratified. It was rejected by the Congress of Colombia on the 10th of June, 1824, "in consideration of the fact," it said, "that the object proposed by both republics has not been fulfilled, and that further negotiations ought to be opened by which the boundaries of their respective territories would be settled definitely and with *clearness* and *thoroughness*," to the end that this new negotiation may be *facilitated* and *expedited* (D. M. P., vol. VII, p. 104).

On the 6th of July, the Colombian Minister, D. Pedro Gual, brought to the knowledge of the Secretary-General of "His Excellency, the Liberator, President of Colombia, entrusted with Dictatorial Power over Peru," the resolution of the Congress, in obedience, he said, to the desire to avoid any cause of offense that might interrupt the good harmony existing between the two republics, and begging that a copy thereof be transmitted to the Chargé d'affaires of Colombia at Lima, D. Cristóbal Armero, so that formal notice of the resolution may be given to the Peruvian Minister of State. This Armero did in due course, on the 7th of February, 1825, suggesting that along those lines, and at an opportune time, a new convention might be negotiated which would fill up "the

voids" in the resolution and allay all apprehension of difficulties by stipulating precisely and definitely as to the character and scope of all conventions on the subject (D. M. P., No. 5). The Minister himself, D. Pedro Gual, during the conferences at Guayaquil in 1829, subsequently stated that the former convention had been rejected because of the possibility of vexations resulting from its vagueness and because it provided no means for bringing the matter to a conclusion (for example, by means of a commission or arbitration).

The Galdeano-Mosquera convention really had been hampered by those defects and Colombia was clever enough to put them forward, for the purpose of standing well with Peru, covering up the real cause of her disapproval of the convention, which was the omission of the clause "from the disemboguing of the Tumbes river * * * to the territory of Brazil."

The convention rejected, there remained in force the treaty of July 6, 1822, by which the territories of both republics were recognized and the demarcation of the *exact boundaries* reserved for a special agreement, which now had been left for a more convenient opportunity.

There also remained in force, with respect to Peru, the resolution of her Congress of October 23, 1822, whereby all the provinces in dispute were to remain "in the status in which they were found at the time of the victory of Pichincha."

§V. The Colombian Law of 1824 Concerning Territorial Division.

Fifteen days after the rejection of the Galdeano-Mosquera convention by the Colombian Congress, that is, on the 25th of June, 1824, the act relating to the territorial apportionment of the Republic of Colombia was approved, whereby it was divided into twelve *departments*, each of which was subdivided into *provinces*, and the provinces in turn into *cantons*.

Of the departments, three were Guayaquil, Ecuador and Azuay.

The Department of *Guayaquil* was divided into the two provinces of Guayaquil and Manabi. The province of Guayaquil was subdivided into six cantons. Tumbes is not mentioned among them.

The Department of *Ecuador* was divided into three provinces. One of them was named Pichincha, capital Quito, subdivided into

five cantons, among which appeared those of Quito and Quijos. Another province was named Chimborazo, capital Riobamba, which was subdivided into six cantons, one being Macas.

The Department of *Azuay* was divided into three provinces—Cuenca, Loja and Jaén de Bracamoros and Maynas. The province of Jaén and Maynas, capital Jaén, was subdivided into three cantons, called Jaén, Borja and Jeveros.

As a result of that division, the name of Quito, formerly given to the Presidency and Audiencia of the colonial régime, the territory of which, in the extensiveness it enjoyed in the XVIth century, the Republic of Ecuador now seeks to recover, is restricted in Colombia to a single canton in one of the provinces of a department of the Republic of Bolívar.

We note also that the names of Jaén and Maynas are made to figure in that division as forming a single province, and the names of Quijos, Macas and Jeveros, as cantons parcelled out among different provinces.

The Republic of Ecuador attaches much importance to that act, but from an international point of view, it is wholly unimportant. It was a law of the internal administrative system, and, even in this aspect, purely nominal, since Ecuador neither administered nor occupied even the province of Jaén or those territories of the ancient Comandancia general of Maynas.

What significance could such a law have in view of the status of the relations between Colombia and Peru? It can only be considered as an act of *prevision* to meet the contingency of the ratification of the boundary convention in the form proposed by Mosquera, or as an act of *preparation* for a new convention.

In any event, with respect to Maynas, it did not disclose the intention to claim, in its entirety, the territory rightfully belonging to the ancient Audiencia of Quito prior to the Royal Decree of Charles IV, but only portions thereof corresponding to those cantons, for it is not supposable that they were to be extended from the cordillera of the Andes to the Brazilian frontier. Mosquera, in his note in regard to the election of deputies referred to the section north of the Marañón and in his draft of a convention he contented himself with suggesting the idea of a partition—all this notwithstanding Bolívar's acknowledgment that the province of Maynas belonged to Peru and was occupied by her troops, and, with regard to Jaén, the plan suggested by Bolívar in his letter is clearly

revealed to threaten Peru as to Jaén in order to secure as much of Maynas as he could.

Colombia was bound to Peru by the treaty of 1822, maintaining the *status quo* until a special convention could be negotiated for the exact determination of boundaries. The Colombian Congress rejected the Galdeano-Mosquera draft, because it did not definitely fix those boundaries, and sought to obviate all causes of conflict with Peru. The Peruvian Government had no reason to concern itself with the Colombian act of territorial division, being confident that nothing of a practical nature would be done without its consent, and awaited the final decision of the Colombian Government concerning the pending convention, of which decision Peru was not notified until the 7th of February, 1825, when it was conveyed, with many protestations of most intimate friendship and an expression of the desire to enter into a further convention at an opportune time.

§VI. Bolivar's Policy in Peru; His Action With Respect to Those Matters.

We have just related how Bolívar, in his letter written at Guayaquil on the 3d of August, 1822, recognized the rights of Peru with respect to Maynas and expressed the wish that Jaén should be left to the Peruvians, resorting to the proffer, however, as a means of obtaining advantages through a friendly compromise—but believing, furthermore, that it was within the right of the Peruvians to retain that province, we may assume, although he does not go so far as to say so, because of his belief that the will of the towns to unite themselves one with the other preserved the boundaries of the ancient divisions, that being his understanding with respect to Venezuela and New Granada, as is shown by the instructions he gave to the negotiator of the treaties of alliance in order that the rights created by the revolution might prevail.

We have seen also how he ordered General Sucre, as the latter divulged on the 7th of October, 1822, to suspend the proclamation of the Colombian constitution in Jaén and to permit that province to participate in the elections for the first Peruvian Congress.

So, then, Bolívar, as supreme executive and Dictator of Peru, governed Jaén as a Peruvian province.

This is evidenced by the following official communication from the Secretary of State, D. José Espinar, dated December 16, 1823,

and addressed to Colonel D. Mariano Castro, in which the Secretary transmits the latter's appointment as Intendent and prescribes his powers:

"His Excellency, the Liberator, considering the necessity of placing the administration of the *provinces of Peru* in the hands of a person of sufficient capacity, activity, zeal and patriotism, and all these qualities concurring in your Lordship, His Excellency has seen fit to appoint your Lordship *Intendent* of the province of Cajamarca, with command over the provinces of *Jaén*, Chota, Chachapoyas and Moyobamba (part of Maynas).—His Excellency, the Liberator, in conferring this office on your Lordship, not only gives you the authority pertaining thereto, but he further *delegates to you a part of the extraordinary power reposed in him by the Sovereign Congress of Peru*. By virtue of those powers, your Lordship is fully and completely empowered to intervene in the affairs of the treasury and to make such alterations in the revenues of the *State* as may be of absolute and urgent necessity, to collect the taxes fixed by the former government, and to augment them in proportion to the needs of the troops under your command.—Your Lordship will co-operate directly with *the Prefect of the Department*, giving him a share in the political and internal affairs of the provinces within your Lordship's jurisdiction, and you will report to His Excellency, *the Liberator*, all military occurrences and others that may be of any importance." (M. P., vol. II, p. 26.)

There is in the conduct of Bolívar, however, something more significant than in all the concrete facts that one could cite, and that is, that it having been within his power to deliver Jaén and Maynas over to Colombia during his sojourn in Peru, *he did not do it*, notwithstanding the all-embracing dictatorship he enjoyed from 1823 to 1826, and he had reached the extreme pinnacle of power, for he could suspend the constitution and the laws and issue decrees having the force of legislative enactments. Was it because he was convinced of Peru's rights, or because he was loath to offend the republic that had conferred on him the dictatorship and proclaimed him Father and Savior? However that may be, the fact remains that he preserved to Peru the provinces of Jaén and Maynas. In that his action differed from his treatment of the provinces of Upper Peru, for he gained her recognition of them as a single independent State, under the name of Bolivia, in 1825.

Bolívar being still in Peru, attendant on the convocation of the new Congress, to assemble in 1826, the diplomatic agent of Colombia presented two notes, one on the 27th of February, and

the other on the 7th of March, referring to the elections in the province of Jaén and part of the province of Maynas, and the Peruvian Minister of Foreign Relations replied, restricting his answer to the assurance that he would bring the agent's claims to the attention of the future Congress for proper action (D. M. P., No. 6).

After Bolívar's departure, the Colombian agent, assuming a different attitude, revived his former claim, in a note dated December 2, 1826, adding his protest against the appointment of the Bishop of Maynas, which he held to be an act of aggression against the sovereignty of his government (D. B. P., No. 8).

We may safely say, in résumé, that the relations between Colombia and Peru were of the utmost cordiality from the birth of the two States until Bolívar's departure from Peru; the latter republic *retained* her provinces of Jaén and Maynas and no *claim* thereto was set up by Colombia.

§VII. Bolivian Constitution of 1826 and Its Nullification in 1827.

As soon as Bolívar had assured the independence of Peru and had been confirmed in the dictatorship, he passed with General Sucre over into the provinces of upper Peru to form a new state in that region, an undertaking in which he was successful.

The Congress of Chuquisaca, composed of representatives from those provinces, proclaimed their independence on the 6th of August, 1825, adopting for them the name of the Republic of Bolivia, and later ratified a constitution drawn up by Bolívar and conferred on that General the presidency for life, which, however, he accepted for two years only.

Enamored of his constitution, upon which he looked as an almost perfect work, Bolívar desired that it should be adopted in Peru. The Peruvian Minister of the Interior and Foreign Relations; Pando, on the 1st of June, 1826, addressed a circular recommending it to the electoral colleges, convoked for the purpose of determining whether the assembling of the Congress had better be suspended and to consider the reforming of the constitution.

The electors of the college of Lima, assembling on the 16th of August, approved the Bolivian constitution and appointed a commission to advise Bolívar of its action and offer him the

Presidency for life. According to Cevallos, in his *History of Ecuador*, Bolívar made the following reply to the electors: "That constitution is the work of the centuries, for in it I have assembled all the lessons taught by experience and the counsels and wisdom of the sages. * * * Peru counts among her sons men eminent and capable of discharging the duties of the supreme magistracy. To them you must turn, and not to me, to fill that office. * * * Myself I owe to Colombia; and, if she permits me, I shall still consult my conscience as to the sanction with which you have loaded me with honor, for I am constrained to serve Peru in all that may depend on me, myself." After its ratification by the electoral college of Lima, the ratification of the colleges in the other provinces followed, to the number of fifty-eight, with the single exception of that of Tarapacá, which remained silent.

Believing his work of organization in Peru to be ended, and as it was necessary that he should return to Colombia where his presence was being demanded with great eagerness, Bolívar set out on his return on the 3d of September.

He committed the Government of Peru to the charge of a council, presided over by General Santa Cruz, and left behind for greater security three divisions of Colombian troops. The Council of Government, by decree of November 30, 1826, ratified the Bolivian constitution and ordered that it be sworn to.

It was, however, a most incongruous constitution. Bolívar had sought to pattern it after the constitution of the United States, the model usually followed in republican constitutions, and had searched among the European types for counterpoises in government which for a long time had been thought to be essential in South America. The result was a code both complicated and impracticable, based, as it was, on a presidency holding power for life and three chambers—of tribunes, senators and censors. And, as is said by Cevallos, the great admirer of Bolívar, "a president for life, responsible to no one, with the right to name his successor and propose a candidate for vice president * * * must have been looked upon with great distrust by the body of the people, who might well have feared the apparition of a Cromwell, clearing the way that led Itúrbide to the throne."

Those who distrusted the intentions of Bolívar, the opponents of that union of republics under one head, and those who had leanings in that direction, commenced to oppose the Liberator.

The discontent in Peru soon became manifest. On the 28th of December, 1827, the government issued a decree providing that, whereas doubts had arisen as to the legality of the Bolivian constitution, an extraordinary congress should be assembled to determine what constitution should be in force. The constituent congress having assembled on the 11th of June, declared the Bolivian constitution null and void, and ordered the provisional observance of the constitution of 1823. On the 21st of March, 1828, a new constitution was proclaimed.

The acts committed by the Colombian troops left by Bolívar on his departure from Peru, and the abovementioned opposition on the part of the Peruvians to his constitution and policies, brought about a severance of relations between Peru and Colombia, which were re-established by the treaty of 1829.

But, before entering upon a study of that treaty and the events preceding it, let us note the status assumed by the boundary question as a result of what has been set forth.

§VIII. Résumé of the Boundary Question Down to 1827.

1) **The Question in General.**—We may summarize the question of boundaries according to the relations between Peru and Colombia down to 1827 in the following points:

1st. The treaty of amity and alliance signed July 6, 1822, (Mosquera-Montegudo)—the only one subsisting between Colombia and Peru with binding force of ratification by both congresses—maintained the *status quo* as to territorial possession and boundaries existing at the time of the mutual recognition and agreement of those two countries as independent states, leaving for a *special convention* "the demarcation of the *exact* boundaries."

2d. On the signing of that treaty, the annexation of Guayaquil to Colombia had not even been ratified, while Tumbes, Maynas and Jaén were integral parts of the State of Peru; Tumbes and Maynas as provinces still belonging to the Viceroyalty of Lima, and Jaén, aside from its colonial ties, by its voluntary incorporation in 1821.

3d. Bolívar, in his letter of August 3, 1822, to General Santander, who acted as his substitute in the chief executive office of Colombia, declared that the annexation of Guayaquil to Colombia was not assured; that Peru occupied Jaén and Maynas, the latter

belonging to her by a recent measure, and that it would be necessary to leave Jaén to Peru for Maynas, and advance along the coast as far as possible beyond Tumbes.

4th. Those aspirations on the part of Bolívar were interpreted in the proposal made by General D. Joaquín Mosquera, Plenipotentiary of Colombia, in the attempt of December, 1823, to settle the boundaries on the basis of a recognition, as the boundaries of the respective territories, of the same that were held in 1809 by the Viceroyalties of Peru and New Granada, that is, from the disemboguing of the Tumbes river in the Pacific to the territory belonging to Brazil. Because of the Peruvian Plenipotentiary's refusal to accept the second part of that proposal, the convention was signed without including it; but, as a result of the omission, it was rejected by the Colombian Congress on the pretext that it was thereby rendered obscure.

5th. The instructions given Mosquera by the Colombian government for the negotiation of the treaty of July, 1822, contained the true principle upon which to settle the question definitively—that is, the acceptance of the colonial demarcations insofar as they may not have been modified by the right of the emancipated towns freely to constitute themselves. On that principle Colombia occupied a legitimate status, formed, as she was, by the union of the Viceroyalty of New Granada and the Captaincy-General of Venezuela, and on that principle Colombia could retain Guayaquil, leaving to Peru, in their integrity, Tumbes, Maynas and Jaén. But she exposed herself to the loss of Guayaquil, which desired either to be independent or to be united with Peru, and she would have had to renounce her aspirations to enlarge herself by the acquisition of Maynas and Tumbes. Following this course of reasoning, Colombia resorted to compromise, proposing a line which, beginning at Tumbes and ending at Brazil, would give her parts of those provinces and leave Guayaquil in her possession, yet without making mention of that province.

6th. As the special convention for the *exact* demarcation of the boundaries to which the treaty of July, 1822, referred was not negotiated, that treaty only remained effective as recognizing each state in the possession of its territory, considered in connection with the declaration of the Peruvian Congress of October 23d of the same year that all the provinces in dispute should remain "in the status they occupied at the time of the victory of Pichincha."

7th. Colombia made no claim whatever for the "restitution" of the provinces in question. On the contrary, she respected the government exercised over them by the State of Peru, at the head of which Bolívar himself was established, invested with dictatorial powers.

2) **The Question in Its Relation to Jaén.**—The towns of the province of Jaén which, having declared their independence, recognized and took the oath of allegiance to the Government of Peru in 1821, were convoked in 1822 for the elections to the constituent Congress of Peru; and, although Sucre at once sought to prevent their participation in those elections, trying on the other hand to bring about the swearing of the Colombian constitution, the elections not only took place by order of Bolívar, but the Colombian constitution was not sworn to. The inhabitants of Jaén were, therefore, represented in the Congress instituted by him in Peru, and which ratified the treaty with Colombia, and Jaén continued to be represented in all the subsequent congresses.

The national flag of Peru waved over Jaén from the moment of its adoption by the State (D. M. P., No. 160), and inhabitants of Jaén formed a part of the Peruvian army, contributing by its forces and its resources to the common defence of the country during the war of independence from beginning to end.

Bolívar governed Jaén as a Peruvian province, appointing its functionaries and delegating to some of them his own discretionary powers (M. P., vol. II, p. 26).

It may safely be said that Colombia gave no more thought to Jaén than as a means of obtaining, by its express renunciation, a compromise favorable to her aforementioned aspirations.

3) **The Question in Its Relation to Maynas.**—In his letter of 1822, above referred to, Bolívar recognized Maynas as belonging to and occupied by Peru. That occupation was not merely military in character, but the continuation of Peru's possession of those territories she was continuing to govern and administer as in the era of the Viceroyalty, by and with the consent of their inhabitants who had concurred in bringing about the independence. From the time when Bishop Rangel withdrew to Spain, in 1821, the See of Maynas had been confided to the ecclesiastical governors appointed by the Archbishop of Lima. Moreover, the Government of Peru appointed the governors of the District of Maynas, which belonged to the Department of Trujillo.

When the inhabitants of Maynas were convoked in 1822 and 1826 for the elections to the Peruvian Congress, Colombia demanded an explanation. One was given by the Government of Peru, but without abdicating its rights; then, as on all subsequent occasions, the elections were held (D. M. P., No. 136).

Colombia did not lay claim to the province of Maynas, although she did seek to obtain a part of it, for Mosquera proposed, in negotiating the convention of 1823, that the divisionary line should reach as far as Brazil; though Colombia herself declined to confirm that proposal.

4) **The Question in Its Relation to Tumbes.**—In the negotiations attending said convention, Mosquera also proposed that the divisionary line should begin at the mouth of the Tumbes river, as much for the purpose of realizing Bolívar's plan to extend Colombia along the Pacific coast, as to leave the Gobierno of Guayaquil embraced within the republic without having to concern himself with the colonial *uti possidetis* or the right of the emancipated towns to constitute themselves or to incorporate freely with another state. But, in that also Mosquera was obliged to desist.

Tumbes continued to remain a part of Piura under the Government of Peru. It is of record that on the 30th of March, 1826, the personnel of the municipality of Tumbes was replaced in accordance with the Peruvian constitution; that Tumbes, in December, 1827, belonged to the department then called La Libertad, and that it was included in the register of tributaries of the District of Piura for 1828 (D. M. P., Nos. 203, 204 and 205).

In the minutes of the session of March 30, 1826, above mentioned, are set forth the appointments made by the municipality of the judges for Los Corrales, Oidor, Cabuyal and *Sarumilla*, places to which we have referred in treating of the colonial epoch, and which, as may be seen, continued to belong to the jurisdiction of Tumbes.

CHAPTER III.

Treaty of Guayaquil of 1829.

(Historical Premises and Composition.)

SUMMARY :

- I. Historical premises of the treaty of 1829.—1. Events of 1827 altering the relations between Colombia and Peru.—2. The mission of the Plenipotentiary Villa (1828).—3. The war of 1828-1829; its true causes.—4. Efforts toward peace; Oña bases for peace negotiations.—5. Preliminary peace convention of Girón.—6. Continuation of the war; armistice of Piura.
- II. Composition of the treaty of 1829.—1. Guayaquil conferences (Gual-Larrea); observations thereon.—2. Official communication of the Peruvian Plenipotentiary to his government.—3. Exchange of ratifications without previous approval of the Colombian Congress.

§I. Historical Precedents of the Treaty of 1829.

1) Events of 1827 Altering the Relations Between Colombia and Peru.—When Bolívar arrived at Bogotá on his return from Peru, he found the republic much disturbed by the dissensions between the Venezuelans and Granadans, by the strife existing among the parties, by the rebellion of certain leaders and the defection of former friends seeking to rival, or fearful of, his personal power. To check the disintegration that threatened to destroy the republic he had founded, and, even at the risk of confirming the suspicion of excessive ambition on his part, he issued a decree on the 23d of November, 1826, reinvesting himself with the extraordinary powers of which he had been deprived in his absence, and forthwith set out to pacify Venezuela. He succeeded in re-establishing order in all parts, and was able to say, on the 3rd of January, 1827, after pardoning the rebels and those who had been disloyal to his person, "Let us cast into the abyss of time the year 1826 * * *; what has occurred has passed from my mind."

But the germ of distrust with respect to his projects remained, and was encouraged by the manifestations of his desire to impose on Colombia the constitution in force in Bolivia and Peru, and from

those two republics spread the movement, begun and supported by the Colombian troops he left behind on his departure, that developed into further disorder in Colombia.

On the 26th of January, 1827, the very month in which Bolívar brought to an end his work of pacification in Colombia, the Colombian contingent in Lima, with its leader, Col. Bustamente, rose in revolt, declaring that they would not consent to a dictator in their country, or to the adoption of a constitution with which they were not familiar. Whether or not that uprising was provoked by the Government of Peru, certain it is that the Peruvians were discontented with the Bolivian constitution, and that that government, two days afterwards, issued the decree casting doubt on its legality and convoking an extraordinary congress for the purpose of deciding which constitution should be enforced. Valenzuela says that General Santander, Vice-President of Colombia, applauded the conduct of the Peruvian Government, as did the enemies of Bolívar, and went so far as officially to palliate the mutiny.

The Peruvian Government sent the mutinous troops back to Colombia, where they disseminated discord throughout the southern departments of that republic.

The constituent Congress assembled at Lima, and, by the act of June 11, 1827, declared null and void the Bolivian constitution and provisionally put in force the constitution of 1823.

General La Mar being named President, established two army corps, one at Puno, on the Bolivian frontier, and the other in Piura, near the frontier of Colombia.

Valenzuela states that General La Mar, availing himself of the presence of General Gamarra in Puno, provoked the insurrection of the Bolivian division of Colombian troops at La Paz on the 25th of December, 1827. In any event, the truth is that that other division left by Bolívar also rose in revolt against the government he had established.

As a result of those events, the good relations which until then had existed between Peru and Colombia were disrupted; the press of the two countries published criticisms and recriminations displaying much bitterness.

It was in the midst of such a situation that Peru sent D. José Villa to Colombia as Minister Plenipotentiary.

2) **The Mission of the Peruvian Plenipotentiary, Villa (1828).**
—The Plenipotentiary Villa arrived at Bogotá on the 11th of Feb-

ruary, 1828. He went with the object, as he said, of presenting to the Colombian Government the explanations demanded by that government concerning the expulsion of her diplomatic agent at Lima, Armero; but Bolívar, to show his resentment against Peru, and Villa himself being *persona non grata*, declined to receive him, commissioning his Minister, Revenga, to confer with the Plenipotentiary in his stead and to set forth the claims of Colombia. Revenga addressed to Villa a preliminary note, in which he asked the latter whether he was disposed to answer "all the charges" that he was prepared to make. To that Villa replied that his answer could cover only the points as to which he was authorized to treat.

Colombia's purpose to humiliate the representative of Peru, or to break off negotiations with him, now became apparent, and it was confirmed by the note of the 3rd of March, wherein Revenga formulated all the charges to which he had recourse, couching them in terms most offensive and provocative.

"It is extremely regrettable," he wrote, "that Señor Villa does not come clothed with authority to *restore* the province of Jaén and *part* of the province of Maynas, provinces unquestionably Colombian and for a long time the subject of our claims, and to liquidate and settle the account for supplies furnished to Peru." He speaks of the sacred character of those obligations and adds, "as to Jaén and Maynas, whether bearing in mind the principle that has invariably guided all the American states, to refrain from encroaching on the limits possessed by the great divisions of our continent as colonies, or whether remembering the endeavors to which those provinces *really owe their independence*, it is clear that the attempt to retain them as Peruvian territory must be characterized as *usurpation*."

This is the first time in Colombia's diplomatic relations with Peru that the word "usurpation" is used, and now we see the nature of those relations as we have seen their antecedents: as when Bolívar had recognized the rights of Peru over the entire territory of Maynas, and had governed Jaén as a Peruvian province. But the most interesting is the statement that the two principles that must be borne in mind in discussing the question of boundaries, are the principle involved in the ancient colonial divisions, and that relating to the manner in which they made themselves independent, for both principles favored Peru, Colombia not being in a position to attribute to herself the emancipation of Jaén and Maynas, unless on the basis of the assistance given the State of Peru as a whole for the achieve-

ment of its independence, in which case she could lay claim to the whole Peruvian republic.

To those charges the Plenipotentiary replied in their proper order, and also to other charges brought to his attention, Peru having been allowed a maximum term of six months within which to settle the matter definitively. That period expiring without any settlement having been reached, the Colombian Minister wrote: "The Government of Colombia will believe, not only that Peru antagonizes her with deliberate intention, but also that Peru has left the decision of the rights of the matter to the fortune of war" (M. P., vol. II, pp. 52 *et seq.*).

Villa was dismissed on the pretext that his credentials were not sufficient.

3) **The War of 1828-1829; Its True Causes.**—While those events were transpiring in Bogotá, the rebellion against Bolívar continued to spread throughout the Departments of Guayaquil, Loja and Cuenca, which responded to the excitement created by the Colombian troops sent back from Lima, and which, perhaps, believed that they could count on the support of General La Mar to bring about their independence or their union with Peru. Cevallos, the Ecuadorian historian, states that on the 21st of February, 1828, Captain Orellana, in command of a Peruvian detachment stationed on the frontier, passed *the line of the Macará* and occupied the town of Zapotillo, belonging to the province of Loja, and raised the flag of his country. Restrepo, the Colombian historian, records that Flores, General in command of the army of Colombia in the south, issued a proclamation on the 18th of April, announcing that the Liberator would proceed to Peru to punish that nation for its perfidy. That proclamation, he adds, as imprudent as it was impolitic, was held at Lima to be a declaration of war.

Either as a result of the proclamation or because of the events at Bogotá, the Peruvian Congress, on the 20th of May, passed an act in which the army and fleet were ordered to prepare for war, President La Mar being authorized to command the troops in person and make proper disposition of the national militia.

Such was the condition of affairs, says Valenzuela. Bolívar knew of the events transpiring in Bolivia, the work of Peru's armed intervention, which forced Sucre to leave that country and renounce the presidency. The Liberator was indignant. On the 3rd of July he put forth a fiery proclamation containing expressions of unusual

violence against the Peruvian Government, and so excited the inhabitants in the southern part of Colombia that they flew to arms and rushed to the frontier to await his arrival, which was to be the signal for hostilities.

Shortly afterwards, on the 20th of July, the Colombian Government made public the declaration of war it was about to engage in with Peru and set forth its principal grievances. These were: injuries received from Peru in return for services rendered; the incitement of the division of Colombian troops at Lima to mutiny; the despatching of those troops of Colombia, using them as the means of taking possession of the three southern departments (alluding to Loja, Cuenca and Guayaquil); the dismissal of the diplomatic agent, Armero; the sending of the Plenipotentiary Villa, for the purpose of gaining time, unaccompanied by instructions to arrange the settlement of the indebtedness and "to negotiate for the restoration of the province of Jaén and *part* of Maynas, which Peru holds by usurpation;" the seduction of the Colombian troops that rebelled at La Paz on the 25th of December; the crossing of the frontier by a detachment that raised the Peruvian flag on Colombian territory; the preparations for war going on in the army and fleet, and the recent armed intervention in Bolivia (D. M. P., No. 8).

Jaén and Maynas are mentioned only in the clause that appears as an incident setting forth the complaint that Peru had sent her plenipotentiary lacking in powers sufficient to "treat"; and, so far was the matter of those provinces from being the principal motive for the war, that the historian Restrepo, who had been Bolívar's Minister, does not give it a place in his résumé of the grievances set forth in that declaration of war.

The true motive for the war on the part of Bolívar is divulged by that writer and statesman when he says that "the Liberator, deeply wounded in his honor and in his personal sensitiveness by the men of the party then holding in its hands the reins of government in Peru, desired the war as a means of exacting, by his triumphs, a brilliant satisfaction and humiliation of that republic." We must confess, he adds, that he was not wholly unjustified in this, for the party that had possessed itself of the government of Peru had not been content with casting out his constitution and taking from him the presidency for life, but had organized the revolution against him in Bolivia, and even in Colombia, and had publicly insulted him.

Let us add to the motives for Bolívar's personal resentment the disillusionment as to his scheme of a confederation of South American republics, together with his fear of the dissolution of his own republic of Colombia; and, on the part of Peru, lay the desire to govern herself, with no presidents for life and no dependencies on foreign governments.

General La Mar replied in terms both violent and offensive, justifying his acts, and forthwith entered upon the campaign.

In the war Bolívar at once met with two serious obstacles. The first was the defection of Colonels Obando and López on the 12th of October, 1828, who, with the Colombian troops under their command, rose in revolt against the Liberator's government and defeated General Mosquera on the 12th of November, taking possession of Popayán and co-operating in the movement started by the entry of the Peruvian army. The second was the capitulation of Guayaquil, January 19, 1829, to the Peruvian fleet, which had besieged the city since the previous November.

After a campaign of thirty days, General Sucre, at the head of the Colombian army, gained a victory over the troops of Peru at the battle of Tarqui on the 27th of February, 1829.

4) **Efforts Towards Peace; Oña Bases for Peace Negotiations.**—Before entering on his campaign, General Sucre wrote to General La Mar on the 28th of January, 1829, proposing peace, in obedience to the first impulse of his heart and in forgetfulness of his personal grievances, to the end that bloodshed might be avoided between sister peoples. La Mar replied that he was not opposed to a compromise, although he took occasion to state the reasons that actuated Peru in penetrating Colombian territory and liberating the towns "wearied from suffering an insupportable yoke from which Guayaquil is now free." Sucre then transmitted from Oña, on the 3rd of February, the "bases for negotiation of peace." The principal bases were: the reduction of the military forces of Peru and Colombia; the settlement, by means of commissioners, of the question of boundaries, and payment of indebtedness; mutual satisfaction to be given by the governments for what had occurred; refraining from interference in Bolivia, and the immediate abandonment of Colombian territory by Peruvian troops (D. M. P., No. 10).

Guayaquil was in the power of Peru, the province of Loja, as Restrepo declares, was occupied by her troops, and General La Mar believed his triumph secure, counting, as he did, on the support to be met with on the part of the towns. To be forced to retire with

the army, as an indispensable prerequisite to the signing of a treaty of peace, he held to be a humiliation and declined to subscribe to the conditions proposed. In returning them, says Cevallos, he proposed, among other things, that "the department of Guayaquil should return to the status it occupied in 1822 before its incorporation in Colombia."

It should be noted that, in that tentative toward peace essayed by Colombia, no claim was put forth to Jaén or Maynas, reference being made only to the settlement of the question of boundaries; that Sucre did not refer to those provinces when he exacted the abandonment of Colombian territory occupied by Peruvian troops, and that the real crux of the difficulty was Guayaquil, Colombia claiming recovery thereof on the retirement of the Peruvian troops, while Peru hoped that Guayaquil might regain the independence it enjoyed prior to the annexation.

5) **Preliminary Peace Convention of Girón.**—The Peruvian troops having been defeated at the battle of Tarqui, on the following day, February 28, 1829, the preliminary convention of peace was signed, at the instance of General Sucre, on the field of Girón, and was known by that name. The convention was a reproduction of the Oña bases, with certain modifications and additions. Both parties binding themselves to the stipulations therein, it became the forced basis for the definitive treaty of peace that was to be entered into later.

In the ninth article of the convention it was stipulated that: "As Colombia will not consent to the signing of a treaty of peace while troops of the enemy occupy *her territory*, it is agreed that, these bases settled, the rest of the Peruvian army shall retire south of the *Macará* * * *," and, in the 11th article: "The Peruvian army shall begin its retirement from Loja on the 2nd day of March next and will *completely evacuate the territory of Colombia* within twenty days, counted from that date. Within the same period the city of Guayaquil will be *restored* to the proper authorities. * * *

Nor was anything stipulated in that convention as to Jaén or Maynas; it limited itself to the statement that a commission would be appointed for the settlement of the question of boundaries, as we shall soon explain when we take up the definitive treaty, which commission was to be charged also with the liquidation of the indebtedness arising out of the war of independence.

If Colombia had in mind that Peru "had usurped or unwarrant-

ably held the province of Jaén and part of Maynas," why, being the victor, did she not demand their *restitution*, as she had exacted in the case of Guayaquil and in the case of the abandonment of Loja?

Having recovered Guayaquil and arranged that the Peruvians should retire to the southern bank of the *Macará*, Colombia considered herself *completely* restored to the possession of her territory.

To refrain at such a time from claiming as her own the provinces of Jaén and Maynas, was tantamount to a recognition at least of possessory status in favor of Peru, leaving the matter reduced to a question of *boundaries*.

6) **Continuation of the War; the Armistice of Piura.**—On the 9th of March, 1829, the day following Bolívar's entry into Pasto, after suppressing the rebellion started by López and Obando, he received with great satisfaction the news of the victory of Tarqui and the signing of the preliminary peace convention, and left at once for Quito to set in motion the negotiation of the definitive treaty.

But his satisfaction was of short duration, for Peru declined to carry out the convention of Girón, the Peruvian leaders refusing to turn over Guayaquil; La Mar alleged that the decree granting honors, conceded by Sucre as a result of the victory, amounted to a new offence, and the government denied the validity of the convention because of the absence of congressional ratification.

The campaign, known at this period as that of Buijo, was thereupon resumed. The operations, says Cevallos, were of small importance, as they were reduced to the general dislodgment of the Peruvians from Babahoyo, Baba, Daule, Samborondón and Yahuachi.

But the city of Guayaquil remained in the power of Peru and the sea littoral continued under the control of her ships. On the 11th of March the commanders of the garrison and of the fleet determined not to comply with the convention (D. M. P., No. 12), and Guayaquil's resistance created a serious danger to Colombia. General Flores, who had succeeded General Sucre in command, wrote to Bolívar on the 25th of that month: "If the remainder of the Peruvian army should embark at Payta and march on Guayaquil, they could do us much harm in view of present conditions, for if, after penetrating Daule, they should attack us with superior forces, we should find ourselves obliged to resist the attack without being able to maneuver on the flanks or undertake a retrograde movement." And, in another letter, of the 31st, also addressed to the

Liberator, he added: "The sentiment in Guayaquil and in all its towns is bad, the worst * * * ; all—all with the exception of four families, *are enemies of Colombia* and wish to be independent * * *" (D. M. P., No. 16).

From the foregoing may be understood the eagerness with which Bolívar sought to bring the war to a close and secure possession of Guayaquil, the annexation to Colombia which he had accomplished not having been in accord, as may be seen, with the sentiments of its inhabitants.

Peru had reinforced the garrison at Guayaquil, and it did not seem possible to take that stronghold and bring the war to an end. "However," says Restrepo, "it *suddenly* happened that the roadway to peace was smoothed as a result of disturbances that had for some time been brewing in Peru." Further along, Cevallos says: "An event altogether foreign, but of the greatest importance, occurred to give another turn to the conflict, and put an end to this second campaign."

On the 5th of June, 1829, General Lafuente, who commanded the troops quartered in Lima, seized upon the government of Peru, and, four days later, General Gamarra rose in rebellion in Piura, capturing La Mar and at once sending him into exile. The rebels had taken advantage of the feeling of dissatisfaction with La Mar resulting from his defeat at Tarqui and had deprived him of power, naming Gamarra President, and Lafuente Vice-President, of the republic.

These facts are cited by the historians of Colombia and Ecuador, who confess that that was the way in which the war was brought to a close.

Bolívar sought to avail himself of those circumstances in order to secure from its new government, first, an armistice, and, later, the ratification of a definitive treaty of peace on the bases of the Girón convention.

By the armistice signed at General Headquarters in Piura July 10, 1829, the suspension of hostilities on sea and land for a period of seventy days was agreed on to enable both governments to arrive at an understanding, but the Government of Peru bound itself to the immediate delivery to the Government of Colombia (within six days from the ratification of the armistice) of the Department of Guayaquil and its fortified city (D. M. P., No. 21). Guayaquil was, in effect, turned over on the 20th of the same

month, a truly extraordinary haste in making such delivery when, as we have said, therein lay the real bone of contention, and there appeared to have been imposed no justification therefor.

Bolívar profited much by the termination of the campaign, for, shortly thereafter, he was thus enabled to check the spirit of rebellion among his own people and defeat General Córdoba, who had risen in insurrection against him (September 12th).

§II. Composition of the Treaty of 1829.

1) **Guayaquil Conferences (Gual-Larrea); Observations Thereon.**—Following the agreement at Piura, the Governments of Colombia and Peru entered on negotiations for a definitive treaty of peace, appointing, as their respective plenipotentiaries, D. Pedro Gual and D. José Larrea, who met at Guayaquil for that purpose in September, 1829, and reached an agreement after six conferences.

At the second conference, on the 16th, the question of boundaries was broached. The Plenipotentiary of Peru proposed that it should be settled on the basis of "the present possession of territory," or that it should be left to a commission, and that, in case such commission should not agree, it should be referred to a friendly government. The Colombian Plenipotentiary said he thought it would be well to use more precise language in order to avoid any occasion for misunderstanding, and suggested that it would be better to adopt the expression "the demarcation of the ancient Viceroyalties," which had been agreed to by Peru in the treaty he exhibited (that of 1823), without prejudice to "making mutual cessions and concessions" to secure a more natural and exact divisionary line. The Peruvian representative replied that the treaty was not in force because it had not been ratified by Colombia. The Plenipotentiary (of Colombia) rejoined that, if his government had not ratified it, it was "because it did not offer, in itself, the means of arriving at a conclusion," but that it was not because of that fact that Peru had refrained from signifying her consent to that demarcation.

As a result of all this, the latter, D. Pedro Gual, proposed the three articles bearing the numbers 5, 6 and 7 of the new treaty, establishing the bases and procedure by which the question of boundaries might be definitively settled.

At the third conference, on the 19th, the Peruvian Plenipotentiary stated that "the articles relating to boundaries having been

considered, * * * the proposal therein is agreed to, being well persuaded of the rights of his government in that respect, as well as of the advantage and profit that would result from such a measure."

After that assent the Plenipotentiary, Dr. José Larrea, indicated the divisionary line which, in his judgment, would be the best to adopt for the definite settlement of the matter. D. Pedro Gual stated that he did not wish to enter into topographical discussions but that he agreed also that "his government should participate in the instructions to the commissioners, in order that the divisionary line running from Tumbes might establish the boundaries known to have been possessed by the ancient Viceroyalties of Santa Fe and Lima until it meets the Chinchipe River, the waters of which, and as well the waters of the Marañón, should continue to divide the two republics as far as the boundaries of Brazil; this" (he adds) "appears to be the best, most secure and most practical rule to work by in order not to involve ourselves in a labor that we might not be able to bring to an end within a period of six months."

The Plenipotentiaries pursued their consideration of other matters pending, and signed the treaty at the city of Guayaquil on the 22nd of September, 1829.

It will be noticed at once that at those conferences no mention whatever was made of the *restoration* either of Jaén or Maynas, whereas that was the proper time to speak of them, if Colombia intended to claim "their restitution." On the contrary, in stipulating for the reduction of the military forces "in the northern departments of Peru and in the southern departments of Colombia," the possessory status was ratified, Peru being in possession of Jaén, a province of the northern boundary department. D. Pedro Gual further recognized that the waters of the Chinchipe divided the two republics, which signified that Jaén was embraced within Peru.

As to the Marañón being the divisionary line of the territories of Maynas, we have already seen that this had not ceased to be an aspiration on the part of Colombia, with no other foundation than the claim that the inhabitants were not included in the computation for the Peruvian electoral census and in the tentative advanced during the negotiation of the treaty of 1823, which was rejected by Peru, to extend the line as far as Brazil.

That Colombia should extend herself along the coast of Tumbes, leave Jaén to Peru and take over a part of Maynas, was the idea

of Bolívar, expressed in his letter of 1822, and the line his Minister Plenipotentiary, Gual, indicated as offering a definitive solution of the boundary question, and to which idea the other Plenipotentiary, Larrea, who had also been Bolívar's Minister in Peru, approached; but in the treaty of 1829, no particular line whatever was defined, nor was anything more definite discussed than that Tumbes should be the point of departure for "the labors" of demarcation to be undertaken by the commission in conformity with certain fixed principles and definite conditions.

2) **Official Note from the Peruvian Plenipotentiary to His Government.**—In his official note of the 23d of September, transmitting to his government the protocols of the conferences, the Peruvian Plenipotentiary, Larrea, stated:

"Without insisting on the fixing of the bases as to the boundaries of the two republics, to which, under my instructions, I was to adhere, viz., that they should be considered as remaining in their present position, or, in the contrary case, that the decision thereof should be submitted to a commission to be appointed for that purpose, I adopted the most simple and natural course, that is, to recognize, as the divisionary line between the two republics, the same that existed when they were known as the Viceroyalties of Peru and New Granada, before their independence, avoiding with the greatest firmness the condition adopted in article 2 of the convention of Girón, which is the *uti possidetis* of the year 1809, as may be seen in its literal context. So that the basis adopted by me is *general* and *indeterminate*, admitting, therefore, of any interpretation that may be favorable, the points in controversy relating thereto being submitted to the decision of another government for arbitration, in conformity with Article 19 of said treaty. Moreover, notwithstanding these reasons, it is my *personal* opinion, and I so stated at the conferences referred to, that, in order in the future definitely to avoid controversies of every description with that republic, it would be most suitable and convenient to fix, as the boundaries of the two states, the mouth of the Tumbes river, with a line running parallel through the environs of Loja to the source of the Chinchipe river, the waters of which are confluent with the Marañón and enclose our territory in that section" (D. B. P., No. 12).

It seems certain, therefore, that in indicating that line, Larrea did so on his own responsibility, induced by his *personal opinion*, and by way of compromise, in order to avoid future difficulties; by his subsequent statements, however, he revealed that he was not very

well acquainted with the matter in hand or aware of the importance of that which might come before him for decision. But we need not dwell on this point because nothing was agreed to, or could have been agreed to, concerning possible provisions by way of compromise, beyond what was expressly stated in the treaty.

With regard to the cleverness of which he boasts, in having left the bases for the boundaries in a *general* and *indeterminate* state, so that Peru might interpret them in her own favor and leave the final decision to the arbitration of another government, it seems clear that he confined himself to the acceptance of what had been proposed by Gual, who dominated the conferences, and that he did not aspire at that time to fix the divisionary line, but only to establish the basis and the procedure to be followed at an opportune time, in making the delimitation, and to stipulating, in that procedure, for international arbitration as a last resort.

3) **Exchange of Ratifications without Previous Approval by the Colombian Congress.**—That treaty was signed at Guayaquil September 22, 1829, by the Plenipotentiaries, D. Pedro Gual and D. José Larrea, whereupon ratifications by both governments were exchanged, in the same city, on the 27th of October of that year, by Sr. Larrea, in the name of Peru, and General D. Juan José Flores, in the name of Colombia (D. M. P., No. 22).

But it is important to call attention to the fact that the Government of Colombia ratified the treaty without the previous approval of its Congress, as required by the constitution of that country. It is said that Bolívar intended to present it for legislative approval in conjunction with the boundary convention when the latter should have been negotiated, but the fact is that Colombia was dissolved without entering into the convention and before the treaty was approved by its Congress. It, therefore, remained imperfect. We shall deduce the consequences of that imperfection at the proper time.

CHAPTER IV.

Treaty of Guayaquil of 1829,

(Its Tenor and Interpretation.)

SUMMARY:

- I. Tenor of the Treaty of 1829.—1. Special articles relating to the boundary question.—2. Articles relating to other questions.—3. Articles relating to all questions.
- II. General characteristics of the treaty.
- III. Interpretation of the treaty.—1. Colonial boundaries and the respective territories: *a)* the ancient Viceroyalties; *b)* before the independence.—2. Territories to which the colonial boundaries referred.—3. Procedure for the fixing of the boundaries.

§I. The Tenor of the Treaty of 1829.

The treaty of Guayaquil of September 22, 1829, the history of which we have just given from the origin of the war that brought it about to its ratification, contains twenty articles. Four relate exclusively to the question of boundaries, fourteen deal with other questions, and two are common to all (D. M. P., No. 22).

1) **Special Articles Relating to the Question of Boundaries.**—The articles relating exclusively to the boundary question are the 5th, 6th, 7th and 8th, the text of which we reproduce:

“Article 5th. Both parties recognize, as the boundaries of their respective territories, the same that were possessed before their independence by the ancient Viceroyalties of New Granada and Peru, with such variations only as they may judge convenient to agree on between themselves; to which effect they obligate themselves from the present moment reciprocally to make those cessions of small parcels of territory which may contribute to fix the divisionary line in the course most natural, exact and calculated to avoid contentions and vexations between the authorities and inhabitants along the frontiers.

“Article 6th. In order that this last result may be obtained as expeditiously as possible, it has been agreed, and is hereby expressly agreed, that there shall be constituted and appointed by both governments a commission, composed of two persons for each

Republic, who shall survey, rectify and fix the divisionary line in conformity with the stipulations in the preceding article. That commission shall, with the concurrence of the respective governments, place each of the parties in possession of the territory to which it may be entitled, accordingly as it proceeds with the recognition and tracing of said line, beginning from the Tumbes river, at the Pacific ocean.

"Article 7th. It is likewise stipulated between the contracting parties that the boundary commission shall begin its labors forty days after the ratification of the present treaty and shall conclude them within the period of six months following. If the members of said commission should disagree on one or more points in the course of their operations, they shall submit to their respective governments a circumstantial account of all that has been done, in order that those governments, taking such accounts into consideration, may amicably reach the most mutually advantageous determination of the matter, the commission in the meanwhile to continue its labors to a conclusion without any manner of interruption.

"Article 8th. It has been agreed, and is hereby expressly agreed, that the inhabitants of the small parcels of territory which, by virtue of Article fifth, may have to be ceded mutually by the contracting parties, shall enjoy the prerogatives, privileges and immunities enjoyed, or which may be hereafter enjoyed, by the other inhabitants of the country in which they may definitely establish their residence. Those who shall declare before the local authorities their intention to become citizens of the territory of Peru or of Colombia, shall be allowed a year within which to make such disposition as they deem best of all their movable and immovable property and to remove themselves, with their families and property, to the country of their election, free from all obligations and rights whatsoever, without being subjected to the least molestation or hindrance."

2) **Articles Relating to Other Questions.**—Preceding the articles above quoted appear those providing that "there shall be a peace perpetual and inviolable, with constant and perfect friendship, between the two republics"; that the contracting parties obligate themselves to forget all that has taken place; that neither shall give freedom of passage through its territory, or lend aid to the enemies of the other, and that the military forces in the northern departments of Peru and the southern departments of Colombia shall be reduced to a number necessary merely for the maintenance of security and order.

After the articles relating to boundaries, the treaty deals with the subject of navigation and traffic upon the rivers running, or which may run, through the frontiers of the two republics; with the

indebtedness contracted by Peru for the aid received from Colombia at the time of her independence; with restoration of ships and other property seized during the late war and acquired in fulfillment of compromises growing out of that war; with the consideration due the diplomatic and consular representatives; the freedom of commerce between the two republics; the extradition of fugitives from justice, and with co-operation in bringing to an end the traffic in African slaves.

3) **Articles Relating to all Questions.**—These are the two last mentioned.

The next to the last, that is, article 19th, provides that the Republics of Peru and Colombia, desiring to maintain the peace and good understanding happily just re-established by the present treaty, declare solemnly and formally:

First, that in case of doubt as to the understanding of any of the articles of this treaty, or of failure amicably to agree upon a settlement of the points that may be the subject of disagreement by the commissioners who are to act under the provisions of articles sixth and tenth of this treaty, one party shall present to the other the reasons which are the basis of the doubt, and, still failing to agree themselves, they shall both submit a circumstantial statement of the case to a friendly government, whose decision shall be absolutely obligatory.

Second, that, whatever may be the causes of offence occurring between the two republics, whether by way of complaints on account of injuries, insults or grievances or others whatsoever, neither shall authorize acts of reprisal or declare war against the other without first submitting the differences to the government of a power friendly to both, and,

Third, that, before having recourse to another power for the resolving of doubts arising out of any of the articles embraced in the present treaty, or for settlement of their differences, they shall employ between themselves all those measures of conciliation and agreement proper between neighboring nations united by ties of blood and most friendly and close relations.

The final article, the 20th, provides for the ratifications.

§II. General Characteristics of the Treaty.

From a simple reading of the Guayaquil treaty of 1829, may be deduced the following general characteristics:

1st. *It is not a special boundary treaty*, but, as expressly stated in Article 1st, is one of those called of *peace and amity*, and deals with the variety of matters that such treaties usually embrace.

2d. *It does not establish the divisionary line* between the republics of Peru and Colombia, and, therefore, *does not settle the question of boundaries*; it establishes merely the basis and the procedure for a delimitation thereof.

3d. *It leaves the final solution of the matter* pending upon what is done by the special commissioners, acting in accord with their respective governments, upon the agreement of those governments, or amicable compromise in case of disagreement, and, upon the decision of another government, to be named as arbitrator, as a last resort—that is to say, pending an *agreement* of the commissioners, an *amicable compromise* by the governments or an *international arbitration*.

The defence for Ecuador maintains, however, that the question was decided, and decided in favor of Colombia, by that treaty, as to which, passing now to its interpretation, we shall see.

§III. Interpretation of the Treaty.

1) **The Colonial Boundaries of the Respective Territories.**—The first doubt arising in the interpretation of Article 5th of the treaty, in which is established the *basis* for the delimitation, is as to *which territories* the word *boundaries* refers in that clause which begins: “Both parties recognize, as the *boundaries* of their respective territories, the same that were possessed by the ancient Viceroyalties before their independence. * * *” Does the word *boundaries* refer to the territories which, as provinces, or as departments, made up the States of Peru and Colombia? Does it refer to those which formed part of the ancient Viceroyalties?

Let us leave this question until after we have decided the more simple one as to the *historical moment* to which allusion is made in speaking of the ancient Viceroyalties before the independence.

Ecuador has derived from those words—the interpretation being

so clear, that it is enough to abide by their literal meaning—her principal argument, that the present question stands decided, claiming that the solution dates back to the time when the Viceroyalty of Santa Fe, or New Granada, was *created*.

a) *The Ancient Viceroyalties*.—We relate now their antecedents.

The Mosquera-Monteagudo treaty of July 6, 1822, left for a special convention "the demarcation of the *exact* boundaries that were to divide the territories" of both states. The Galdeano-Mosquera convention of December 18, 1823, stipulated that "both parties recognize, as the boundaries of their respective territories, the same that were possessed in the year 1809 by the *ex-Viceroyalties* of Peru and New Granada." The Colombian Congress declined to ratify that convention because it rejected the final clause of Mosquera's proposal: "from the disemboguing of the Tumbes river to the territories of Brazil," under the pretext that the convention thereby became obscure, and that its interpretation might lead to conflict. The bases for peace proposed by General Sucre at Oña on the 3d of February, 1829, provided that a commission should be appointed "to settle the boundaries between the States, the political and civil divisions of the Viceroyalties of New Granada and Peru in August, 1809, when the revolution of Quito began, to serve as the basis of such settlement." The same was proposed in the peace convention of Girón, ratified by Sucre and La Mar, March 1, 1829, eliminating the word "civil." The proposal formulated by the Plenipotentiary of Colombia, in the second conference at Guayaquil, and accepted at the third conference by the Plenipotentiary of Peru, contained the same provision that is found in the treaty they signed, but using the word *extinguished* instead of *ancient* (Viceroyalties), which appears in the treaty.

In the protocols of those conferences it is not explained why the Plenipotentiaries substituted "extinguished" for "ancient," from which we must conclude that it was a correction of style, made when the treaty was engrossed for signature. There was, as a matter of fact, more propriety in the language "ancient Viceroyalties"—to signify that they might not be understood as still existing—than in the use of the words "ex-Viceroyalties," or "extinguished Viceroyalties" used before to express the same idea—that is, that they were no longer in existence, that they had ceased to be, *contradistinguishing* the colonial régime, which was the ancient, from the régime of the new States, which was the modern.

The defence for Ecuador resorts to the denomination "ancient Viceroyalties" in order to antedate the colonial boundaries as far back as the dates of the *two births* of the Viceroyalty of Santa Fe, maintaining that the royal decree of 1717, creating it the first time, and that of 1739, which re-established it after its extinguishment, are the two titles on which it must depend for the antiquity alluded to by Ecuador. So that Ecuador seeks to suppress all the titles justificative of the rights of Peru and consistent with the modifications made in that territorial division by other royal decrees enacted subsequently, and wiping out the *history* of those ancient Viceroyalties as if their lives were reduced to the single incident of their births. Assuming that the State of Ecuador is the successor in ownership and inheritance of the Viceroyalty of Santa Fe, through the succession of Colombia, it forgets, notwithstanding, that ownership may be acquired in the legal situation in which it *ultimately* finds itself—that the property she receives as heir is not that which the deceased possessed at birth, or during life, but that which is left at death.

b) *Before the Independence*.—"Independence," having reference to the Viceroyalties, although it may also refer to component parts of the new States, it is certain that the word accomplishes the destruction of Ecuador's claim that the boundaries are those of the date of the birth of those States, indicating on the contrary their death, as we have said.

General Sucre, the author of the bases drawn up at Oña, and signer of the convention of Girón, in submitting to Bolívar his opinion of the treaty that had been concluded, lamented the fact that the question of boundaries had not been made more clear. "In its reference," he said, "to those possessed by the two Viceroyalties at the time of achieving their independence, it has been left obscure, because Peru proclaimed herself independent in the year '20, New Granada in the year '10, and, in both epochs, the revolution itself extended the authority of the Viceroy of Peru. For that reason I fixed upon the boundaries existing in the year 1809, which was a thing well understood." (M. P., vol. II, pp. 97 *et seq.*)

All were agreed that, in order to fix the colonial boundaries, it was necessary to adhere to those existing in the last moments of the colonial régime. There were two ways of identifying them: one, by determining upon the date, and the other by setting up the fact of the death of the ancient régime, and the apparition of the

new—the independence. To designate the year 1809, in which the revolution of Quito broke out, was to betray historical inaccuracy, since the events of that year in Quito lacked importance and did not modify the colonial régime. Peru remained loyal to Spain until the entry of San Martín in September, 1820, which was the beginning of the general uprising; Guayaquil emancipated itself in October of the same year; Jaén in May, 1821; Lima proclaimed the independence of Peru on the 28th of July; Quito remained submissive until a few days after the battle of Pichincha, in May, 1822, and the Viceroyalty of Peru did not really disappear until Bolívar and Sucre achieved the victories of Junín and Ayacucho in 1824. Because of this indetermination of dates, the authors of the treaty of 1829 considered it preferable to refer to the “independence.”

But in this there lurked the danger for Colombia suggested by Sucre, lest the Viceroyalty of New Granada, having disappeared before that of Peru, the Peruvian Government should claim territories coextensive with the Viceroys of Lima during the war, for which reason, as General Sucre says, he determined upon the year 1809.

Under that possible interpretation, Peru could claim the province of Quito itself. But Peru only claims title to the colonial boundaries, those possessed by the Viceroyalty of Lima in accordance with the colonial law by virtue of which they were defined. It should be noted that, in 1809, there were in force the Royal Decree of 1802 incorporating Maynas and the royal order of 1803 incorporating Guayaquil, declared “absolute” by that of 1806, and which left no doubt that Tumbes bounded on the Machala.

As to the province of Jaén, there was in force the royal order of 1784, which provided for its incorporation in the Viceroyalty of Peru, leaving it in suspense only as to the condition that the Viceroy of Santa Fe “should not object on account of serious inconvenience,” and that condition was removed from the moment in which that Viceroyalty ceased to exist, and the jurisdiction passed to the Viceroyalty of Lima, which exercised it until the province emancipated itself on the 8th of May, 1821, and voluntarily united itself with the new Peruvian State.

2) **The Territories Referred to by Colonial Boundaries.**—Article 5 of the treaty of 1829 stipulates that: “Both parties recognize, as *the boundaries of their respective territories*, the same that were possessed before their independence by the ancient Viceroyal-

ties * * *” To our understanding, this means that the *boundaries* respectively enclosing the contracting states were to be the same that enclosed those territories under the ancient viceregal régime.

When that treaty was signed, Colombia was in possession of Guayaquil by virtue of the inexplicable surrender agreed to at Piura, and Peru was in possession of Tumbes, Jaén and Maynas. The boundaries possessed by those territories, and other boundary points possessed under the colonial régime, must necessarily have been those which would have been held under international law constituting the frontier between the two republics.

On the signing of the treaty of July 6, 1822, with the Republic of Colombia, Tumbes, Maynas and Jaén were integral parts of the state of Peru. By that treaty they mutually recognized each other as States, leaving to a special commission the determination of their exact boundaries. Guayaquil still preserved its independence. Bolívar, supreme executive and Dictator of Peru, from which he separated Bolivia, did not turn over Jaén or Maynas to Colombia, but governed them as Peruvian provinces. War broke out, then came peace, and Colombia assumed the position of being *repossessed* of her territory by the restoration of Guayaquil and the retirement of the Peruvians from Loja, by virtue of the convention of Girón. Neither in the peace preliminaries nor in the conferences leading up to the treaty of 1829, nor in that treaty itself, is the restoration of Jaén or Maynas spoken of—a proposition that would have been inevitable if the purpose had been to alter the possessory status and put an end to a supposed usurpation. So, then, the treaty of 1829 denotes the sanctioning of the possessory status, the republics having recognized *their respective territories* with the limits possessed by them before their independence.

The defence for Ecuador maintains that the restoration of Jaén and Maynas was *tacitly* provided for in the treaty, because, as Vattel says, “matters without which it is impossible to substantiate the subject of an agreement are *tacitly* conceded,” and that matter having been the cause of the war, it is not conceivable that Colombia, the victor, would lend herself to the establishment of peace without obtaining the fruits of her victory.

But we have already shown that the restitution of Jaén and Maynas was not the true object of the war, and that the war continued after the victory of Tarqui, that Colombia was the party to offer peace, and that Bolívar was the one most in a hurry to start it and

bring it to an end, because of the political situation in which he found himself.

We agree with Vattel that a treaty of peace should be interpreted against the party proposing it because, "in a certain way that party is the one who dictates it, and, as with that party lies the fault of not having expressed itself with more clearness, it may not complain of any broadening or restriction of the meaning of the terms to a less favorable sense * * *"

In any event, cessions of territory are not *presumed*, even when the conqueror may have occupied and retained possession of them. "The cession of territory," says Bonfils, "requires a formal agreement set forth in the treaty of peace." And Calvo maintains: "The status of possession at the moment of the conclusion of peace is considered, in the absence of provision to the contrary, as the basis of the new public order created by the peace; each party retains the sovereignty over the territory it occupies. When the conquered party can only secure peace at the cost of a portion of its territory, such a cession is made an integral part of the treaty of peace, or of a supplement thereto, enumerating the territories ceded. * * *"

The proof that, in the treaty of 1829, both parties respected the territories then in each other's possession, reducing the question to a matter of delimitation, lies in the fact that Article 5th speaks only of *small parcels* of territory in providing for reciprocal *cessions* by which the parties were to "fix the divisionary line in a manner natural, exact and calculated to avoid contentions and vexations between the authorities and the inhabitants along the *frontiers*." To those small parcels of territory reference is also made in Article 8th. Certainly neither Guayaquil nor Jaén, and much less Maynas, could be qualified as "small parcels of territory." And if they had agreed, or authorized an agreement, to cede those provinces, there would have been an express provision to that effect.

3) **Procedure for the Determination of Boundaries.**—According to Article 6th, a commission composed of two persons for each republic was to be appointed for the purpose of surveying, rectifying and fixing the divisionary line. That commission, the article provided, "shall, with the concurrence of the respective governments, place each of the parties in possession of the *territory to which it may be entitled*, accordingly as it proceeds with the recognition and tracing of said line, *beginning from the Tumbes river at the Pacific ocean.*"

~~The treaty of Tumbes was~~ without so stating, to leave Guayaquil

to Colombia, as we have already suggested in our discussion of Mosquera's proposal at the time of the negotiation of the convention of December 18, 1823; and Guayaquil had been the constant concern of Bolívar, the moving inducement for the continuation of the war after the battle of Tarqui, and the subject matter of his chief interest in the treaty after he had succeeded in recovering it by the armistice of Piura.

We need not reiterate the demonstration of Peru's perfect right to the territory situated on the other side of the river, or Peru's opposition to Mosquera's proposal that the mouth of the river in the Pacific should be determined upon as the starting point of the divisionary line. With greater skill Colombia manages now to mention the Tumbes river in the treaty, not, however, setting it up as a boundary, but only as the point at which the work of delimitation was to be begun. The area lying between that river and the Machala, the true boundary of Guayaquil, remained in the nature of a neutral zone. If in that work of delimitation the titles to the plantations of Callancas and Sarumilla, already familiar to us, had been presented, we do not believe that the commission would have declined to admit them, as those presented by proprietors along a boundary in justification of their rights under a private demarcation are admitted, whatever may be the point of departure taken for its verification.

In case the commissioners should disagree on one or more points in the course of their operations, they were to report to their governments, in order that the latter "may amicably reach the most suitable determination of the matter"; and on their failure so to decide, those governments were to submit the point in dispute to the decision of a friendly government.

The doubts occasioned by the wording of the basis of settlement, and the difficulties arising in its application, lead one to believe that the divisionary line never would have been settled except by compromise or arbitration.

CHAPTER V.

Treaty of Guayaquil of 1829.

(Its Nonfulfillment and Inefficacy.)

SUMMARY:

- I. Nonfulfillment of the treaty of 1829.—1. Postponement of the work of demarcation.—2. Predispositions on the part of Colombia; the letter of the Plenipotentiary, D. Tomás Mosquera.—3. Predispositions on the part of Peru.—4. Colombia dissolves without making the demarcation.
- II. The supposititious Pedemonte-Mosquera protocol of 1830.—1. Its tenor.—2. Peru denies the existence of that protocol.—3. Reasons inducing the denial of its authenticity.—4. Arguments contrary to its validity and efficacy.
- III. Caducity of the treaty of 1829.—1. Extinction of the personality of Colombia as a contracting party.—2. Impossibility of correcting the imperfection of the treaty; its consequent nullity.—3. Impossibility of fulfilling the provisions of the treaty as to procedure.—4. Negotiation of subsequent treaties.

§I. Nonfulfillment of the Treaty of 1829.

1) **Postponement of the Work of Demarcation.**—The commissioners appointed by the Government of Colombia to carry out the treaty as to the question of boundaries, presented themselves at Tumbes on the 21st of December, 1829, and, those from Peru not having joined them, the former wrote to their Minister at Lima, General D. Tomás Mosquera, so informing him and explaining the difficulties in the way of commencing operations, occasioned by the season. The Colombian Minister notified the Peruvian Secretary of State of the situation and proposed that the operations should be postponed until the month of April, when the season should have changed and the roads improved. The Secretary agreeing, in accordance with his note of January 8, 1830, the work was postponed until the following April (D. M. P., No. 23).

2) **Predispositions on the Part of Colombia; the Letter of the Plenipotentiary, D. Tomás Mosquera.**—As soon as the treaty of 1829 was ratified, General D. Tomás Mosquera, the brother of the

negotiator of the earlier treaties of 1822 and 1823, was appointed Plenipotentiary at Lima, charged specially with the settlement of the boundary question.

In one of the memorials of General O'Leary appears a letter from Mosquera addressed to Bolívar, in which, after felicitating him upon the ratification of the treaty, he says: "Among the documents delivered to me by General Espinar for the Legation of which I have been in charge, there is a copy of the Spanish Royal Decree that orders the aggregation to Peru, in 1802, of the province of Maynas. From what may be gathered from the communications of my brother Joaquín, when he was in charge of this mission, that decree is not in Peru's possession, it apparently having been burned with the archives of the government. I shall, therefore, have to conduct the negotiations depending on the decree aggregating the Presidency of Quito to the Viceroyalty of New Granada; but as I may be confronted with authentic documents, I should like to be instructed respecting my course in that particular, for, as article 5th of the treaty establishes the *uti possidetis* of 1809 as the basis, they could *with justice* claim the left bank of the Marañón" (M. P., vol. II, p. 103).

So that D. Joaquín Mosquera, the negotiator of the treaties of 1822 and 1823, had knowledge of the Royal Decree of 1802, and his brother, Don Tomás, notwithstanding he also knew of the decree, was prepared now to negotiate on the assumption that Peru would not present it because of its having been burnt, apprehending, however, that she might set it up in her favor, in which event he would be under the necessity of recognizing that she could with justice claim the left bank of the Marañón, that is to say, the northern part of that river, to obtain which Colombia had been putting forth her claims. With what censure would Ecuador have judged such procedure if it had been adopted by the plenipotentiaries of Peru!

But there is more of this: the Plenipotentiary of Colombia, charged with carrying into effect the treaty of 1829, declares positively that that instrument has for a basis the *uti possidetis* of 1809—in other words, the recognition of the possessory status, and, consequently, that the colonial limits would have to be those of that date. Why invoke the royal decree creating or re-establishing the Viceroyalty of New Granada? Because of his belief that Peru would not present the titles justifying her rights owing to their having been "burned" with her archives.

In its instructions to her commissioners for the settlement of the boundary question, the Chancellery of Colombia does not speak to them of strict legal right, but directs them to secure an advantageous *compromise* by which Colombia should obtain the line of the Marañón, ceding a large part of Jaén and making out a divisionary line from the Quirós River to the source of the Huancabamba. Did the treaty of 1829 authorize those "large" cessions of territory? Did Colombia possess the right to claim Maynas in accordance with the basis of colonial boundaries while the Royal Decree of 1802 was in existence?

In the official note of January 7, 1830, in which Mosquera proposed to the Peruvian Minister the postponement of operations, he suggested that, in the meanwhile, they might undertake to reach an agreement concerning the boundaries, and discussed with him certain cessions of territory, such as part of the province of Jaén, of Tumbes and the Colán river, but making no mention of the Marañón (D. M. P., No. 23).

3) **Predispositions of Peru.**—The Peruvian Minister, D. José María Pando, replied to Mosquera's note on the 8th, agreeing to the postponement, and adding that, until Col. Althaus should finish the map he was making, "it would be idle to enter upon discussion as to the best frontier between the two countries that could be adopted" (D. M. P., No. 23).

This same Minister of State, Pando, sent to Mosquera on the 5th of February a proposal for a divisionary line for submission to his government. Accompanying it was a note in which he said: "Would it be desirable, would it be profitable, to insist upon the principle that the boundaries of Peru and Colombia should be those which nominally separated Peru and New Granada? The government of the undersigned does not think so. On the contrary, it is of the opinion that it should adhere to the prudent stipulation set forth in article 5 of the treaty of September 22, 1829, that the contracting parties shall make reciprocally those cessions of *small parcels* of territory that would contribute to the fixing of the divisionary line in a manner more natural, exact and capable of avoiding contentions and vexations."

The proposal submitted was the following:

"Beginning at the confluence of the Marañón and Chinchipe rivers, the divisionary line should follow the course of the latter, and afterwards its branch, known as the Canche, as far as its source;

from thence, a divisionary line intersecting the cordillera of Ayabaca along the crests that divide the watersheds, and continuing as far as the Macará river in the Espíndula ravine; the divisionary line then should follow the course of the Macará itself as far as its confluence with the Catamayo, from which union is formed the Chira, and descend with the course of that river to the rivulet Lamor, which could serve as a boundary for several leagues; from thence it should follow a ravine known as Pilares, continuing through the unpopulated region of Tumbes to the Sarumilla river, also called Santa Rosa, which would close the boundary on the Pacific side." (D. M. P., No. 24.)

Pando repeated the above in his instructions of April 15, 1830, to the Peruvian Commissioners, cautioning them that, in case the Colombian Commissioners should not agree, they were to act in accordance with Article 7th, submitting a circumstantial report to the Government (D. M. P., No. 25).

According to that projected line and those instructions, the province of Jaén and the northern part of Tumbes remained in Peru, and nothing was said as to the line of the Marañón, the retention of Maynas being taken for granted. In this way Pando conceived that the treaty ought to be carried out, making cessions of no territories other than the *small parcels* necessary for regularizing the frontier by mutual agreement.

4) **Colombia Dissolves without making the Demarcation.**—In the very month of April, 1830, in which the Peruvian Minister of Foreign Relations gave those instructions to the Commissioners of Peru for carrying into effect the treaty of 1829—which goes to show that there had not yet been a failure to agree—the negotiations in progress by the Colombian Congress for the preservation of the union of the Venezuelan provinces were broken off, and, in the following May, Bolívar's republic was dissolved. On the 6th of that month the constituent Congress of the State of *Venezuela* assembled, and, on the 13th, the new State, which, with the other two departments of the south, Guayaquil and Azuay, took the name of *Ecuador*, was proclaimed at Quito; on the 31st, it declared itself as such new State, wholly independent of New Granada and Venezuela.

Leaving for the chapter to follow the story of Colombia's demise and the birth of those new States, we confine ourselves to pointing out the dates, for the purpose of showing that Colombia stood dissolved in May, 1830, without having accomplished with Peru the delimitation that the treaty of 1829 entrusted to a mixed commis-

sion, and before the Commissioners or their governments could reach an agreement as to the method of verifying that delimitation.

And, notwithstanding this, the defence for Ecuador, though in the first Memorial filed in this Arbitration, invoking the treaty of 1829 as being in force, and urging that the appointment of the mixed commission should be proceeded with to carry the treaty into effect, demands now that it be accepted as fulfilled and perfected, alleging that, in accordance therewith, the delimitation was agreed to as provided in the protocol of the Peruvian and Colombian representatives, Pedemonte and Mosquera, which it is alleged was signed on the 11th of August, 1830, *three months after* the departments of the south had proclaimed themselves independent, in a declaration setting forth the dissolution of the Republic of Colombia.

A contemplation of that performance ought to be sufficient to enable us to understand how unfounded is Ecuador's new claim, yet the importance she ascribes to the supposititious protocol makes it necessary for us to examine it with great care.

§II. The Supposititious Pedemonte-Mosquera Protocol of 1830.

1) *Its Tenor.*—It appears that D. Carlos Paz Söldán, son of the Peruvian geographer and publicist, Don Mariano Felipe, found among his father's papers a simple* copy of the memorandum, draft, or whatever it was that they called the Pedemonte-Mosquera protocol, and that the copy, certified *from that copy* of Sr. Valenzuela, Minister of the present Republic of Colombia, is the document presented by Ecuador before this Arbitration.

The manuscript, or simple copy, to which we refer (D. M. P., No. 26) states that, at Lima, on the *11th of August, 1830*, the Peruvian Minister of Foreign Relations, D. Carlos Pedemonte, and the Plenipotentiary of the Republic of Colombia, General D. Tomás C. de Mosquera, met "to agree on *the bases* that should be adopted by the Commissioners for the demarcation of the boundaries between the two republics."

The Peruvian Minister stated that, from the time the Bishopric of Maynas was formed in 1802, that territory had remained a dependency of the Viceroy of Peru. General Mosquera replied that

*The "simple" copy known to Spanish law is an unauthenticated, or unattested copy as distinguished from the "legalized" copy referred to in this work.—Translator.

when the Bishopric of Maynas was created, the Royal Decree did not clearly determine its boundaries; that the provinces of Jaén de Bracamoros and Maynas returned to the possession of the New Kingdom of Granada, as is shown by the "Spanish Court Guide" for 1822. He read a letter from the Liberator, in response to an inquiry that had been made of him, and *proposed* that "there be fixed, as the basis for the boundaries, the Marañón, from the mouth of the Yurati, in its upper waters, to the point where it meets the Guancabamba River, and the course of the latter river to its origin in the cordillera, and from thence taking a line to the Macará in order to follow along to the headwaters of the Tumbes River." By this method, he added, the question would be concluded, and the Boundary Commission could carry into effect Articles 6th, 7th and 8th of the treaty.

After a protracted discussion, the memorandum continues, the Peruvian Minister agreed to those bases, but with modifications, "fixing for the terminal point, not the mouth of the Guancabamba, but that of the Chinchipe River." The Colombian Envoy stated that what he had offered was all that he could concede, "since, it having been proven that the Decree of 1802 was modified, and that Maynas and Jaén were dependencies of the Viceroyalty in 1807, when the Bishopric was organized out of the Missions of Caquetá, or Yapurá, and Andaquies, that was what was provided in Article 8th of the treaty."

The memorandum concludes as follows:

"The Minister of Foreign Relations proposed that the bases for settlement suggested by the Colombian Minister Plenipotentiary be adopted, leaving their modification as a point pending, and that the Colombian Government *should consider* that modification. * * * The Colombian Minister agreed to everything, accepting from the present moment, as recognized, the perfect right in Colombia to all the territory on the left bank of the Marañón, or Amazonas, and recognized Peru's dominion over the right bank, *the only question left pending for decision* being whether the boundaries should be run along the Chinchipe or the Guancabamba; and, for the purposes above set forth, the Peruvian Minister of Foreign Relations and the Envoy Extraordinary of Colombia have signed this protocol on the date first above written.—CARLOS PEDEMONTE.—T. C. DE MOSQUERA."

2) **Peru Denies the Existence of that Protocol.**—The first time that protocol is spoken of is in the note addressed by the Colom-

bian Chargé d'affaires at Lima, D. Luis Tanco, to the Peruvian Minister of Foreign Relations, on the 7th of July, 1892, on the occasion of his receipt of the third volume of the *Collection of Treaties* of Peru, published by the Department of Foreign Relations. The Chargé d'affaires tells him that in examining the *Collection* he had missed the protocol signed at Lima on the 11th of August, 1830, by Sres. Pedemonte and Mosquera for the purpose of agreeing on the bases to be relied on by the commissioners for the demarcation of the boundaries between the two Republics; and, in view of the importance of that document, referring, as it did, to steps taken to interpret the treaty of 1829, he asks for an explanation of the omission, "to the end that Colombia's lawful titles, in her boundary dispute with Peru, may not appear to be lost sight of." The Chargé d'affaires wrote again on the 22d of December of the same year.

The Peruvian Minister of Foreign Relations replied on the 9th of September, 1893, as follows:

"After most thorough search for the document to which your Excellency refers in your notes of July 7th and December 22d, ultimo; and for any diplomatic communication in which it might be cited, I can assure your Excellency in reply that such a document *does not exist* in the archives of this Department, for which reason it was not included in Volume III of the Arandas *Collection*. I, therefore, do not deem it necessary to take into consideration the remarks your Excellency is pleased to make on the subject of the contents of the protocol or to consider the weight that might be attached to that diplomatic act." (D. M. P., No. 26.)

Colombia had nothing to say in reply to the Peruvian Minister's note, demonstrating by her silence that no such protocol existed or that it had not been found, for, if it had been in her possession, or if she had known where it could be found, she would have produced it or insisted on her claim, to show that it was well substantiated.

Ecuador now invokes that protocol in the present Arbitration, but she presents neither the original nor an authoritative certification thereof, but produces only a certified *copy* of a paper found among the papers left at his death by a private individual, which paper purports to be merely a simple, unsigned copy of the alleged protocol; and it goes without saying that that *copy of a simple copy* is without weight as evidence.

Peru, in her Final Memorial in this Arbitration, unqualifiedly opposes the admission of evidence of that nature, and persists in

her denial of the existence of the protocol (vol. I, p. 325; vol. II, p. 122).

3) **Reasons Inducing the Denial of its Authenticity.**—Although the burden of proving the existence of a document is on the party presenting it, either by the production of the original or an indubitable copy thereof, Peru has demonstrated that the original never existed; and this we also believe, basing our opinion on the following reasons:

1st. That, if the Pedemonte-Mosquera protocol had ever existed, it would have been signed in duplicate, as the alleged copy states, and one of the originals would have been in the possession of Colombia, who would either have produced it, or submitted some evidence of its existence, to offset Peru's denial of 1893.

2nd. That, on the 11th of *August*, 1830, when the Pedemonte-Mosquera protocol purports to have been signed, General Mosquera *had ceased to exercise* the office of Plenipotentiary of Colombia at Lima, as shown by the following documents that Peru reproduces photographically in her Final Memorial (vol. II, pp. 133 and 134; plates I, II and III):

a) General Mosquera's note of *July 24*, 1834, to the Peruvian Minister of Foreign Relations, informing him that he was about to leave for Colombia, notifying him who would be left in charge of the negotiations and taking leave of the Peruvian Government in terms of deepest gratitude. By a marginal note thereon, made the following day, instruction is given to say, in reply, that the Government "*is informed of your temporary retirement from your mission in Peru in order to fulfill the duties to which your country calls you.* * * *"

b) Another note from Mosquera to the Minister, dated *July 31st*, requesting the privilege of transportation on the schooner *Guayaquileña*, of his baggage, which he said he would begin sending down the following day.

c) Answer of the Marine Commander at Callao to the Government, dated *August 2nd*, stating that he would comply with the orders received to facilitate the embarkation of the Colombian Plenipotentiary.

3rd. That, on the *11th of August*, 1830, the day on which the protocol is alleged to have been signed at Lima by General Mosquera, *that General was not at Lima*, but was traveling on the Colombia war schooner *Guayaquileña* that weighed anchor at Callao

on the 10th, conveying him on his passage, as evidenced by the *El Mercurio Peruano*, in its issue of August 12th. On the 14th that newspaper stated that Mosquera had embarked on the 9th, bestowing many eulogies on him, under the heading "A Tribute to Merit." Peru has filed copies of that periodical and photographic reproductions of the articles in question appearing therein (M. P., vol. II, pp. 134, 135; plates IV, V and VI).

4th. That D. Carlos Pedemonte arrived at Callao from Ica and took charge of the Department on the 2nd of August, when General Mosquera had surrendered his diplomatic functions and was on the point of embarking. The Peruvian Minister, therefore, had not had time to take up the question, or opportunity to deal officially with a person who was then no longer exercising the functions of Colombian Plenipotentiary.

5th. That General Mosquera, in a book published at Valparaíso in 1843, discussed his mission at Lima from the time of his arrival at that post in November, 1829, stating that he had been obliged to give up the mission because of events in Colombia without having been able to bring about the liquidation of the indebtedness *or to conclude the settlement of the boundaries*, with respect to which, however, he had almost reached an agreement with the Minister, Sr. Pando, whereby Colombia was to cede to Peru a part of the provinces of Jaén and Maynas and making no mention whatever of Sr. Pedemonte or of any protocol negotiated with him (M. P., vol. II, p. 138).

6th. That no allusion to that protocol is made in any document, nor does Sr. Valenzuela, well informed as he was respecting those affairs, and who legalized the copy of the simple copy above referred to, even mention it in his Memorial of 1893, prepared under the orders of the Colombian Government subsequently to the Peruvian Minister's note denying the existence of that protocol (D. M. P., vol. VII, app. 1).

All this tends to prove that no such Pedemonte-Mosquera protocol of the 11th of August, 1830, existed, and, if what we call a simple copy is *really* a copy of anything emanating at that time from the Colombian Legation, that something must be at most a mere draft for the framing of a protocol for the purpose of facilitating the work if conferences should be held and an agreement reached. It may even be possible that it was drawn up by Mosquera in the desire that the Peruvian Minister should sign it before

he set out on his journey, and that, not having succeeded in this, he departed without hope of accomplishing more.

But, however that may be, the truth is that it was not signed, and that it could not have been signed on that day, because Mosquera had ceased to be plenipotentiary on the 24th of July and had taken ship on the 9th of August.

4) **Arguments Contrary to its Validity and Efficacy.**—Even admitting, hypothetically, the existence of the Pedemonte-Mosquera protocol of August 11, 1830, it could be possessed of no validity or efficacy whatever for the following reasons:

1st. Because on the date of its alleged execution, the Republic of Colombia was not in existence, Venezuela and Ecuador having separated therefrom and organized themselves into independent States. Mosquera, therefore, lacked the representative quality and authority necessary to contract in the name of the State that had conferred on him his powers, because that State had ceased to exist.

2nd. Because, as set forth in the text of the protocol, the agreement depended on a most important question, which was whether the boundaries were to be fixed along the Chinchipe or the Guancabamba, that is to say, whether or not Peru was to retain the province of Jaén, the principal basis of the alleged transaction.

3rd. Because that compromise was opposed to the stipulations of the treaty of Guayaquil of 1829, in accordance with which it claimed to have been drawn, inasmuch as the treaty recognized the possession of the respective territories and authorized only the mutual cession of the *small parcels* that might be necessary to regulate the frontier. It was, of course, impossible to regard either the province of Jaén or the northern part of the Amazonas region as such small parcels. The compromise meant prescinding from the treaty of 1829 in order to achieve the realization of Bolívar's scheme as formulated in his letter of 1822, to threaten Jaén for the purpose of obtaining as much as he could of Maynas; and it is one more proof of the inverisimilitude of the protocol, for it is not conceivable that Peru, who had persistently resisted that purpose while she was under the influence of Bolívar, and while Colombia was so powerful, would accede thereto afterwards, when Bolívar had fallen and Colombia was dissolved.

4th. Because the alleged agreements of the protocol were not ratified by the respective governments, nor could that have been done without previous legislative sanction, all the more necessary because

it made great cessions of territory which the treaty of 1829 had not authorized, and since that treaty itself, from which the protocol purported to derive its *raison d'être*, had not been submitted for the approval of the Colombian Congress.

After these considerations, which obviously demonstrate the non-existence of the protocol, and its inefficacy even if existent, there is no need to examine into the principle it sets up respecting the rights of Colombia over Maynas. We have already seen that Bolívar as well as Mosquera was convinced that Maynas belonged to Peru by virtue of the Royal Decree of 1802; and to say in the protocol that that Royal Decree did not establish boundaries, that it was only ecclesiastical in character, and that the Court Guide of Spain of 1822 was proof of its annulment, is to reveal clearly that Mosquera, or whoever may be the author of those arguments, lacked ability to urge more cogent ones to give an appearance of legality to Colombia's claims concerning Maynas.

§III. Caducity of the Treaty of 1829.

1) **Extinction of the Personality of Colombia as a Contracting Party.**—As we have already intimated, and as will appear more fully in the chapter following, the confederation constituting the Republic of Colombia was dissolved in May, 1830; from it was formed the three independent States of Venezuela, Ecuador and New Granada. No compact whatever preceded the dissolution; it was effected instead by the separation of the provinces of Venezuela first, and later, by those of Ecuador. Colombia, therefore, disappeared as a State possessed of an international individuality, and there were born three other distinct States, with personalities differentiated from the former, and none of which was endowed with the inheritance or liquidation of the rights and obligations that had formerly been held by them in common.

When Colombia disappeared as an international personality, it is clear that she also disappeared as a contracting personality, and that no one, acting in her name, could continue the negotiation of treaties or agreements.

Of what value and efficacy, then, were those she did negotiate?

It is a general rule of international law that international agreements (treaties and conventions) are extinguished, or lapse, on the demise of one of the contracting parties, inasmuch as one of the

subjects of the rights and obligations thereby becomes lacking. The new international entity or entities must be recognized by the surviving contracting State, and that State is not obliged to contract with the new State, because the latter is distinct from the defunct one, and because international agreements obligate only the parties entering into them in the exercise of their sovereignty.

There are usually various exceptions to that rule, such as those relating to treaties involving the payment of indebtedness contracted, and acts already accomplished and creative of a legal status which is maintained by the treaty. The exceptions cited do not break the general rule because they do not signify that the contract continues, but rather that the liabilities of the dissolved confederation are liquidated, or that the facts accomplished are accepted because there is no remedy therefor, or out of the respect due to history.

But be that as it may, in the field of theory it is certain that there is an abundant consensus of opinion as to the caducity of treaties and conventions involving "the action, or continuance of action," of a state that has disappeared, or treaties which remain pending upon "a requirement or condition" that it was incumbent on the state to fulfill. This was the situation in which the treaty of 1829 was found on the demise of Colombia.

2). **Impossibility of Correcting the Imperfection of the Treaty; Its Consequent Nullity.**—The treaty of Guayaquil of September 22, 1829, was approved by the Peruvian Congress in compliance with Articles 43 and 90 of the Constitution of 1828, which exacted that requirement for the validity of international treaties and conventions.

The same requirement was exacted by the Colombian constitution of 1821, known as the Constitution of Cúcuta, Article 55 of which provided that the "attributes *pertaining exclusively* to the Congress are: * * * to give its assent and approval to treaties of peace, alliance, amity * * * and all others entered into by the Executive Power." This is reiterated in the Bogotá Constitution of April 29, 1830, framed by the Colombian Congress in the last moments of the life of that Republic. Its 36th article expressly mentions treaties involving the "alienation, acquisition or exchange of territory."

Now, then; the treaty of 1829 was not submitted for the approval of the Colombian Congress. It would seem that Bolívar's idea was to present it conjointly with the convention or agreement for the settlement of boundaries that was to have been entered into as stipulated in the treaty.

Peru, in the confidence inspired by Bolívar, passed over that omission believing that it would be corrected, but Bolívar's fall and Colombia's dissolution occurred before the treaty was approved by the Colombian Congress, and, as it then became impossible to fulfill that indispensable prerequisite to its validity, the treaty of 1829 became thereby a *nullity*, and the Pedemonte-Mosquera agreement *would also have become a nullity* for the same reason, if it had existed.

3) **Impossibility of Fulfilling the Provisions of the Treaty as to Procedure.**—It will be remembered that the treaty of 1829 did not settle the question of boundaries, but merely prescribed a *basis* for settlement—the basis of colonial boundaries—and established the *method of procedure* for the determination of its boundaries.

That *method of procedure* consisted in the appointment of a mixed commission to survey, rectify and fix the divisionary line, and place each party in the possession of its own, the respective governments being in accord; if the commissioners should disagree, the governments were amicably to agree upon the most suitable settlement, and, in the event that the governments should not arrive at an agreement, the question was to be submitted for arbitration to a third government, friendly to both. The parties were thereupon authorized to make those reciprocal cessions of small parcels of territory which might be convenient for the better establishment of the divisionary line.

This shows that the boundary question was left *pending* by the treaty upon the action of the mixed commission, upon the governments placing themselves in accord, or upon the decision of an arbitrator.

The State of Colombia being no more, it was not then possible to appoint the commissioners who were to represent it, or that a government of that State could agree to any compromise whatever, or that it could submit to an arbitration, commencing with the designation of an arbitrator.

Could Ecuador do this in the name and as the representative of ancient Colombia? No; because Colombia neither transmitted that right to her upon the dissolution, nor has it been recognized by Peru in view of the fact that the party contracted with was Colombia and not Ecuador, a wholly different State.

And to agree and compromise with one State is by no means the same as agreeing and compromising with another; nor are the circumstances confronting the parties in one case the same as in another. Even though Ecuador had succeeded Colombia, she could

not set up the treaty of 1829 against the opposition of Peru, because Ecuador had not carried it into effect. "An international treaty," says Frederic Martens, "loses its obligatory force if either of the contracting parties should undergo changes so fundamental as to alter the legal personality and alter the very basis of its existence." And he adds: "All international treaties are signed on the basis of the *rebus sic stantibus* proviso, that is to say, in view of a status of things that determines the *object* and the very *import* of the compromise" (Legal Opinions, M. P. p. 172).

Compromises, as we shall show further along, depend upon time and circumstance. What Peru might have consistently agreed to in the time of Colombia and Bolívar she may no longer have been obliged to agree to after the dissolution of the great republic that Bolívar created and ruled over. The advantages and compensations derivable from a treaty with a State as great as was Colombia are not equal to those obtainable in treating with a lesser State such as Ecuador.

In any event, the fact is that the treaty of 1829 left the boundary question pending on conditions that had to be carried out by both contracting States, which fulfillment was made impossible by the demise of one of those States. The compact, therefore, was extinguished before it could be reduced to accomplish facts which it would be necessary to respect.

4) **Negotiations of Subsequent Treaties.**—On the birth of Ecuador, she sent a plenipotentiary to Lima to treat with Peru, and, after notice by that plenipotentiary that, as Colombia was dissolved, her agreements were no longer valid, the treaty of 1832 was entered into, by which there was a mutual recognition by the States of Peru and Ecuador, as then constituted and organized, and stipulating that "while an agreement for the settlement of *boundaries* was being negotiated, the present boundaries shall be recognized and respected." No mention whatever is made in that treaty of the treaty of 1829; nor is it mentioned as being in force in those subsequently projected between Peru and Ecuador, even in the treaty of 1887, the basis of the present arbitration.

Both parties, therefore, regarded the treaty of 1829 as having lapsed, or they, in fact, nullified it, substituting therefor others that contained different provisions or established procedure.

For the foregoing reasons, we maintain that the treaty of 1829 between Peru and the ancient Republic of Colombia lacks binding

force; and we believe that if Peru opposes it, it is not because it could really injure her case, understood as it seems to us it ought to be understood, but, to render tribute to truth, because of the tortuous interpretation occasioned by the defective wording of its provisions, and the difficulties confronting its application, and because Peru does not recognize Ecuador as the heir of Colombia or consider herself obligated to Ecuador by other compacts than those entered into since she recognized her as an independent State.

CHAPTER VI.

The States of Ecuador and Peru, and their Respective Provinces.

SUMMARY:

- I. The dissolution of Colombia.
- II. The State of Ecuador.—1. Its plebiscitary formation; the departments of which it is composed.—2. Incorporation of Cauca; theory of Ecuador's justification thereof.
- III. The State of Peru.—1. Peru was already constituted when Ecuador was born; provinces of which it was, and continued to be, composed.—2. Maynas (Loreto and Amazonas).—3. Province of Jaén.—4. Littoral province of Tumbes.

§I. Dissolution of Colombia.

The more Bolívar was forced to maintain unity and order in Colombia, by means of the dictatorship and centralization of power, the more he was accused of despotism and of seeking to establish a monarchy or an empire, the discontent meanwhile increasing on the part of the towns and of those who aspired to their government. In the midst of his preparation of the definitive treaty of peace with Peru in 1829, General Córdoba, one of the most famous leaders of his army, revolted at Antioquía. No sooner had he suppressed that insurrection in October, than Venezuela, his own country, where he had attained his first triumphs, rose against him.

As shown in the minutes of the proceeding of November 4, 1829, a junta or assembly of the people at Caracas, convoked by General Arizmendi, Chief of Police, resolved: to decline to recognize the authority of the Liberator, against whom violent speeches were delivered; to bring about the separation of Venezuela from the Government of Colombia, although preserving peace and amity with the central and southern departments; to assemble a constituent Venezuelan congress, and to appoint General Páez to the supreme command until the congress should act. Other towns acquiesced in the resolution and General Páez, who was, next to Bolívar, the highest authority in those departments, invited them into a new union,

which was sworn to on the 24th of December. On that occasion it was resolved to address a petition to the Liberator, representing the necessity, justice and advantage of permitting Venezuela to constitute herself in peace.

On the 20th of January, 1830, there assembled at Bogotá the constituent Congress of Colombia that Bolívar had proposed and convoked in 1828, and to which he had promised to resign his discretionary powers. That he did, rendering an account of his acts, expressing his regret at the accusations made against him, and insisting upon the appointment of his successor as President. The Congress begged him to remain at the helm until the new constitution could be promulgated and the new government started in accordance with its terms. Bolívar accepted. Succumbing to an attack of sickness, however, he left General Caicedo in charge of the government, by authority of the Congress, on the first of March and retired to the Villa Fucha in the hope of regaining his health.

The Congress commissioned its President and Vice-President, General Sucre and General Estévez, to confer with the commissioners of Venezuela with a view to arriving at an agreement; but it became evident at the conferences, held at Cúcuta in the month of April, that a return to the union was impossible. The Venezuelan commissioners attributed its rupture to the despotism of the Liberator. Sucre set forth the complaints of the people arising out of the oppression of a military aristocracy which "not even the dread power of the dictatorship had succeeded in curbing."

The Congress, informed of the conclusion of the negotiations, continued its debates on the new Colombian constitution, approved on the 29th of April, 1830. Bolívar reiterated his refusal to accept the presidency, and General D. Joaquín Mosquera was elevated to the office on the 4th of May. The separation of Venezuela was consummated by the assembling of its constituent congress on the 6th.

Having first passed a resolution expressing gratitude to the Liberator for his services to the cause of American independence, the Colombian Congress closed its sessions on the 11th. Bolívar had already, on the 8th, left for Cartagena with the intention of proceeding to Europe. On the 4th of June, General Sucre, the hero of Pichincha and Ayacucho, was vilely assassinated by his enemies in the forest of Barruecos while returning to Quito after having presided

over the Congress, and so profound was Bolívar's grief that it added greatly to his sufferings in mind and body.

Notwithstanding that, the Liberator was disposed to respond to the call, made in September by the inhabitants of Bogotá, to resume his place at the head of the republic—prepared, he said, to sacrifice his repose, his life, and fame even, on the country's altar; but his sufferings increased more and more until December 17th, 1830, when he died at a country place near Santa Marta. Several days before, he had written a proclamation, saying to the Colombians: "My last wishes are for the country's happiness. If my death can contribute to the quieting of party strife and the consolidation of the union, I shall go down to the grave in peace." Bolívar, who had been born to great wealth, died in poverty.

The Republic of Colombia, dissolved by the secession of *Venezuela* at the close of 1829, the State of *Ecuador* formed in May of 1830 and all hope of re-establishing the defunct republic gone with the passing of Bolívar, the Colombian Government convoked an assembly, which convened on the 25th of December, 1831, and declared, by its act of November 21st, that the central departments were erected into an independent State, under the name of *Nuevo Granada*. Its constitution was ratified March 1, 1832.

From the Republic of Colombia founded by Bolívar, sprang, therefore, the three States of Venezuela, Ecuador and New Granada.

§II. The State of Ecuador.

1) Its Plebiscitary Formation; Departments of which it is Composed.—On the 12th of May, 1830, the day following the adjournment of the Colombian Congress, when it had already become known in the departments of the south that the conferences of April with the Venezuelan commissioners had been broken off and that Bolívar's rule had come to an end, the Prefect of the Department of Ecuador, at the instance of the Syndic and Municipality of Quito, and with the sanction of General Flores, the chief authority in the southern district, convoked an assembly of the heads of families and guilds at *Quito*, which met on the 13th in the commencement hall of the University.

That assembly, in consideration of the dissolution of the union resulting from the action of Venezuela, Casanare, Nieva, Popayán

and other provinces, as well as of the public statements emanating from the executive power, proclaimed that Quito, "exercising her sovereignty, declares herself constituted as an independent *State*, along with the towns embraced in the district of the south and all others that *may wish* to incorporate themselves with her because of natural relations and their mutual advantage." It was agreed, furthermore, to commit the supreme civil and military authority to General Flores, and it was provided that, fifteen days after the receipt of the minutes of the proceedings of the "towns forming with Quito a single State," he should convoke a constituent congress conformably to regulations to be framed by him for the conduct of elections; and the assemblage placed on record its appreciation of the eminent services rendered by the Liberator in the cause of liberty (D. M. P., No. 27).

Guayaquil, in a similar assembly, held on the 19th at the instance of the Prefect, acquiesced in that compact, as did Cuenca on the 20th, and successively, the other cities and towns of the three southern departments.

General Flores, informing the Colombian government of those events, expressed the desire that the best relations might be maintained between the "State of the south and the Venezuelan and Granadan States," and that a compact of confederation might be entered into with them. On the 31st of May, he published a proclamation setting forth that "the south has raised itself to the high rank of a sovereign State," and that he had convoked a congress in anticipation of the time prescribed, in order, as soon as possible, to frame the constitution.

The Congress assembled at Riobamba on the 10th of August, 1830, according to the Ecuadorian historian Cevallos, and, on the 11th of September, ratified the Constitution of *Ecuador*, the name taken by the new State composed of the three southern departments of Colombia—Guayaquil, Ecuador (Quito) and Azuay (Cuenca and Loja).

Ecuador, therefore, was born of a plebiscite by the will of the provinces which, being released from all ties by the dissolution of Colombia, agreed to *unite*, in the exercise of their sovereignty, to constitute a new State.

2) **Incorporation of Cauca; Ecuador's Theory and Justification Thereof.**—On the 27th of April, 1830, the inhabitants of Cauca (the ancient Corregimiento of Pasto), petitioned the Prefect-General of

the South for its incorporation in the Department of Ecuador. On the creation of the State of that name, their petition was reiterated, and the President, General Flores, decreed its incorporation with Ecuador on the 20th of December, *considering*: 1st, that the uprising at the capital of the Department of Cauca in favor of its aggregation to the State of Ecuador is an expression of the *general will* of those inhabitants, manifested in the minutes of the proceedings held on the 28th ultimo * * *; and, 2nd, that it is not possible to ignore *the votes of a people* who manifest the same political beliefs that are held by the State of Ecuador, and to which that people is intimately bound by ties of like sentiment, by mutual interests, by close relations and by other motives of most powerful influence " (D. M. P., No. 27).

The Ecuadorian Congress, in its decree of the 7th of November, 1831, enacted that the Department of Cauca form an integral part of the State from the moment of its incorporation. The Colombian convention, by its act of the 21st of November of the same year, whereby the State of *New Granada* was erected, provided that its southern boundaries "should be definitively established south of the province of Pasto, as soon as a determination should be reached as to the most advantageous course to be pursued with respect to the Departments of Ecuador, Azuay and Guayaquil." That is to say, New Granada did not recognize the incorporation of the Department of Cauca in Ecuador; nor, by the same token, did she recognize the existence of that State.

The neo-Granadan convention, however, afterwards recognized the State of Ecuador by its act of February 10, 1832, and in the constitution of March 1st, but referred, in those enactments, only to the three departments. The Ecuadorian Congress, on the 13th of October, recognized in its turn the State of New Granada, as also that of Venezuela.

Finally, New Granada and Ecuador put an end to their differences by the treaty of peace of the 8th of December, 1832, recognizing each other definitively as independent States and stipulating that their boundaries should be those which, conformably to the Colombian act of June 25th, 1824, separated the provinces of the old Ecuadorian Department of Cauca; the provinces of Pasto and Buenaventura were in consequence incorporated in New Granada, and, in Ecuador, the towns south of the river Carchi, a line established by Article 22 of the aforementioned act between the provinces of Pasto and Imbabura.

§III. The State of Peru.

1) **Peru was Already Established at the Birth of Ecuador; Provinces of which it was, and Continued to be, Composed.**—In May, 1830, when the southern provinces of Colombia declared themselves independent and voluntarily united to form the new State of Ecuador, the State of Peru was composed of the provinces of which it had before been constituted, among them Jaén, Tumbes and Maynas. Their possession, as we have seen, Peru had constantly retained throughout the existence of Colombia, and, during the war she had carried on with that republic, they ranged themselves on the side of the former, and the treaty of 1829 respected her possession thereof, leaving pending only the question of their delimitation.

The birth of Ecuador did not alter the possessory status. The fact that those provinces did not adhere to its formation, the fact that they were not even convoked by the Ecuadorian Government to participate in her constitution, as well as the fact they had been represented in the Peruvian Congress when, without them, Ecuador was recognized as a State, abundantly indicates that all doubt whether Ecuador respected, and the provinces in question confirmed, the *status quo* was allayed. And to this day they have continued to be integral parts of Peru, under her government and administration, sharing all vicissitudes, favorable and adverse, of the Peruvian nation.

2) **Maynas (Loreto and Amazonas).**—The Constitution of Peru of 1828 was published and sworn to in the province of Maynas, as shown in the official communications addressed by the authorities of the towns to the subprefect of that province (D. M. P., No. 137).

Conformably to that constitution, there occurred on the 13th of October, 1828, in "the city of Santiago de los Valles de Moyobamba, capital of the province of Moyobamba," the election of four alternate senators attributable to that province (D. M. P., No. 136).

The Peruvian act of July 29, 1831, provided that the Bishopric of Maynas, preserving its ancient demarcation, should be known as Chachapoyas, and be augmented besides by the province of that name, as well as that of Pataz, which belonged to the See of Trujillo. The canonical proceeding having been instituted in accordance with the law, His Holiness, Gregory XVI, issued, in 1843, the bull creating the Bishopric of *Chachapoyas* assigning thereto "*all those places*

that have constituted until the present time the *territory and diocese of Maynas*," in addition to the provinces of Chachapoyas and Pataz (D. M. P., No. 105). The Pope, therefore, recognized the rights of Peru over all the territory of Maynas.

On the 23rd of October, 1851, Peru entered into a treaty with Brazil, the 7th Article of which, accepting the principle of *uti possidetis*, established, as the frontier "the town of Tabatinga, and from thence a straight line running north to a point opposite the confluence of the Yapurá river with the Apaporis, and from Tabatinga, southward along the Yavari river from its confluence with the Amazonas." Subsequently Brazil also recognized Peru's rights in the Amazonas region.

After the creation, in 1832, of the Peruvian Department of the Amazonas, in which was included the ancient Comandancia general of Maynas, the greater part of the territory of that comandancia was segregated in 1853 to form the military and political government of Loreto. Therefore, that which had been the Gobierno and Comandancia general of Maynas is today the Peruvian Department of Loreto and part of the Department of the Amazonas, which is also Peruvian.

When the Garcia-Herrera treaty of 1890 was debated in the Peruvian Congress, the twelve representatives from Loreto protested against the cession of any part of their territory (M. P., vol. IV, p. 151).

Ecuador had for a long time maintained a consul at Iquitos, the capital of the Department of Loreto, and an important city situated north of the Amazonas river. By virtue of a note from her Chancellery communicating the fact of the extinguishment of that consulate, the chancellery of Peru, in September, 1905, took steps to cancel the *exequatur* issued to the person who had been acting thereunder (M. P., vol. IV, p. 123).

3) **Province of Jaén.**—When in June, 1828, hostilities between Colombia and Peru were on the point of breaking out, the Prefect of the Department of La Libertad (Trujillo) ordered the Subprefect of the province of Jaén to maintain surveillance over the agents whom Bolívar might send to spy upon the military movements or bring discord into the country (D. M. P., No. 166). Jaén, having fought by the side of Peru from the beginning of the war of independence, continued in the union with her throughout the struggle with Colombia.

The southern provinces separated from Colombia and united in May, 1830, to form Ecuador; and Jaén, far from taking part in that movement, elected the deputy who was to represent her in the Peruvian Congress, which body approved its proceeding in the electoral junta on the 6th of November of the same year (D. M. P., No. 163).

And, more than this, the residents of the city of Jaén in the assembly to which representatives were sent by the various towns, and which was held on the 10th of October, 1830, made known, with expressions of great enthusiasm, their desire to continue their union with Peru, "whose constitution, laws and regulations they have voluntarily embraced and obeyed until the present, and protest anew their determination to embrace and obey them in the future." And the same declaration was made at that time by the towns of Pimpinco, Callayuc, Chirinos and Cujillo (D. M. P., No. 168).

On the creation in 1854 of the Department of *Cajamarca* by segregation from the Department of Trujillo, or La Libertad, the province of Jaén was included in that department and continued therein.

4) **The Littoral Province of Tumbes.**—The town of Tumbes, on the 13th of June, 1828, swore to, and acclaimed with equal enthusiasm, the Peruvian constitution of that year (D. M. P., vol. VI, No. 201; plates IV to VI).

On the 31st of March, 1830, the municipality of Tumbes unanimously resolved, in the minute of that day, that that town was the one which had suffered most in the war with Colombia and that it had contributed to the defence of Peru; standing upon those merits and the general will of the citizens for its protest against the idea that, by virtue of the treaty of 1829, its territory should be ceded to Colombia, for the entire populace wished to continue living in the country of their birth, and "to belong to no other" (D. M. P., vol. VI, No. 202; plates VII to X).

By the act of March 30, 1861, the littoral province of Piura was converted into the department of that name, composed of eight provinces; one of them was that of Paita, among the *districts* of which was Tumbes (D. M. P., No. 207).

The act of January 12, 1871, erected the district of Tumbes into a *province* of the Department of Piura, dividing it into four districts: 1st, the District of Tumbes, composed of the town of that

name, the capital of the province, and the settlements of Pampa Grande, Pedregal, Bebedero, La Playa, Isla de Palo Santo and Rio Viejo, as far as Comagua; 2d, the District of Corrales, composed of the community of La Rinconada and the plantations of Platera and Máncora, as far as the ravine of that name; 3d, the District of San Juan de la Virgen, composed of the town of Mal Paso, the Tumbes river and the settlements of Nacural, Cerro Blanco, Hospital, La Peña and the plantation of Cabuyal, and, 4th, the District of Zarumilla, composed of the circumscriptions of Papayal, Lubayal and La Palma. The boundaries of the province were designated as being the same as those separating the districts of which it was composed from the neighboring provinces. Each district had its own municipality (D. M. P., Nos. 208 and 209).

The act of December 20, 1901, raised the province of Tumbes "to the rank of *littoral province*, with the boundaries and districts already possessed," a category similar to that of a department. It shall have, the act provides, a prefect, a departmental treasurer and a judge of first instance (D. M. P., No. 210).

The Government of Peru has enacted numerous measures for the administration and advancement of that province, relating to the organization of the police department, telegraph lines, port works, irrigation, commercial franchises, mines, etc. (D. M. P., Nos. 211 to 224.)

CHAPTER VII.

Peru's Treaties and Relations with Ecuador.

SUMMARY:

- I. Treaty of Lima (amity and alliance), 1832.—1. Peru's first relations with Ecuador.—2. Negotiation of the treaty of 1832; preliminary statements by the Ecuadorian Plenipotentiary.—3. Tenor and ratifications of the treaty (of amity and alliance).—4. Importance of that treaty to the present question: *a*) confirmation of the caducity or nullification of the treaty of 1829; *b*) recognition of the possessory status.
- II. Relations between Peru and Ecuador from 1833 to 1857.—1. Attempts to settle the boundaries (1840-2): *a*) diplomatic notes of 1840; *b*) Valdivieso-León conferences of 1841; *c*) Charún-Daste conference of 1842.—2. Confirmation in 1846 of the treaty of 1832.—3. Mutual demands in 1853 respecting Maynas: *a*) Peruvian enactment creating the Government of Loreto; *b*) measure before the Ecuadorian Congress concerning the navigation of the Amazonian rivers.
- III. Treaty of peace and amity of 1860 (not ratified).—1. Ecuador's agreement of 1857 concerning the cession of territory in settlement of her foreign indebtedness; military occupation of Guayaquil (1858).—2. Object and tenor of the treaty of 1860, known as the treaty of Mapasingue.—3. Its references to the Royal Decree of 1802 and to the treaty of 1829.—4. Legislative disapproval of the treaty; declarations of the Peruvian Congress.—5. Ecuadorian act of 1861 relating to territorial division.
- IV. Arbitral convention of 1887 and the direct negotiations.—1. Negotiation of that convention.—2. García-Herrera compromise of 1890 (disapproved).—3. Supplemental arbitral convention of 1894 (not ratified).
- V. Résumé of the boundary question from 1830 to 1904.

§I. Treaty of Lima (Amity and Alliance), 1832.

I) **Peru's First Relations with Ecuador.**—The relations between Peru and Ecuador began under the most favorable auspices. While the Bogotá Government withheld its recognition of the new State, Peru tendered hers at once, receiving its representative with much cordiality.

On the 26th of September, 1831, D. Diego Novoa presented himself officially at Lima as Chargé d'affaires of the State of Ecuador, which, he announced, having been formed by the will of the towns

composing the southern departments of Colombia, and constituted by the Riobamba convention of 1830, desired to maintain with Peru that intimate friendship which ought to unite states so closely identified in interests. The President of Peru expressed the satisfaction he felt in recognizing the envoy who first made heard in the Republic of Peru the voice of Ecuador, adding that good understanding between two contiguous nations is the most solid basis for their mutual happiness (D. M. P., No. 28).

On the 20th of September, before that presentation took place, the Peruvian Government had addressed a note to Ecuador requesting an explanation of the action of the Bishop of Quito in appointing a Prefect of Missions in Maynas. In its note of the 7th of November, the Ecuadorian Government complied, attributing the appointment to an excess of zeal on the part of the Bishop and explaining that the missionaries had been cautioned to respect the Peruvian authorities, without prejudice, however, to the question of boundaries, which were to be adjusted by a special treaty (D. B. P., Nos. 14 and 15). Ecuador, then, did not believe that the boundaries had already been settled by the treaty of 1829, and that that instrument could be invoked in her favor.

2) **Negotiation of the Treaty of 1832; Preliminary Statements by the Ecuadorian Plenipotentiary.**—Being invested with the requisite power for the negotiation of treaties with Peru, Novoa repeatedly made known the desire of his government to negotiate, as shown by his notes of January 6th, February 24th and 27th, May 14th and June 5, 1832. The Peruvian Minister, Pando, procrastinated in his dealing with the matter until, in his note of the 16th, he was obliged to say that "the Peruvian Government, considering the uncertainty still prevailing as to the bonds uniting it with the three sections into which the Colombian republic had been divided, and bearing in mind that Colombia had entered into commercial agreements with certain foreign powers under the most favored nation clause," was apprehensive lest any treaties she might negotiate with Ecuador should prove vain and illusory.

The Ecuadorian Plenipotentiary rejoined in his note of the 18th of June, making the following important statements: "The bonds which, perhaps in the future, may unite the three sections, can never be tied with disgrace or dishonor to the constitutional charter of Ecuador, or to those of the other States. By virtue of their constitutions each of the States is possessed of authority, expressly con-

ferred, to negotiate treaties of amity, alliance and commerce with nations. * * * If Colombia, united, obligated herself in treaties that have brought ruin to the people; if Colombia made laws inimical to the welfare of her subjects, in a certain way placing about their necks a chain more burdensome than that under which they formerly dragged out their existence, those are the evils and arbitrary acts of which they have energetically rid themselves by the annulment of a compact, violent and destructive. And that compact annulled (that of the union of those States), and *Colombia dissolved*, powerless to give them happiness, *could any one claim that the agreements she made could still have any force and effect*, much less since they are opposed to the happiness of those peoples?" He then proceeds to discuss the agreements on the *assumption* that they were nevertheless valid, or that *they might be confirmed* by the new States (D. M. P., No. 30).

In this manner the Plenipotentiary of Ecuador casts aside the Colombian treaties, without excepting that of 1829, holding them to be of no value since the dissolution, unless they should be confirmed by the new States, and leaving clean the slate for new agreements, free from all obstacles.

3) **Tenor and Ratifications of the Treaty (of Amity and Alliance).**—In consequence of those negotiations, the Plenipotentiaries of Peru and Ecuador signed at Lima, on the 12th of June, 1832, two treaties: one of amity and alliance and the other of commerce.

The treaty of amity and alliance contains the variety of stipulations usually found in international agreements of that class.

Article 14th provides: "While negotiating a convention for the adjustment of *boundaries* between the two States, *the present boundaries shall be recognized.*"

Article 15th reserves the liquidation of the indebtedness between the two republics for consideration when "this matter may be definitely adjusted between Ecuador and the other Colombian States" (D. B. P., No. 16).

The importance of that treaty to Peru, in its bearing on the question of boundaries induces the defence for Ecuador to maintain that it is faulty through the absence of an *exchange of ratifications* "inasmuch as it prescinded from the legal basis set up in 1829 * * * and accepted, at least provisionally, the possessory basis" (Memorial of Ecuador—*Memoria del Ecuador*—1892, p. 164).

But the *act of exchanging* ratifications is one thing, and another,

very different, is the *reason* justifying the belief of Ecuador's defence that she should not have authorized the exchange. And that the ratifications were exchanged, and that the treaty is perfectly valid, are facts as to which there can be no manner of doubt.

The Congress of Ecuador ratified both treaties, that of amity and that of commerce, on the 13th of October, 1832. On that very day the Plenipotentiary, Novoa, wrote from Quito to the Peruvian Minister informing him that his government had authorized the Consul at Lima, Elizalde, to make the exchange; and on the 14th the Ecuadorian Minister of State advised the Minister of State of Peru that the government and the congress had ratified the treaties, entrusting the exchange to Consul Elizalde in the absence of the Plenipotentiary (D. M. P., No. 30). Consul Elizalde writes, on the 6th of December, that he has already received the documents and desires, as soon as possible, to make the exchange (D. M. P., vol. VII, app. 10).

The Peruvian Congress ratified the treaties on the 22d of December, 1832 (*ibid*).

The exchange of ratifications was effected on the 27th, as the Ecuadorian Minister and Plenipotentiary Novoa were advised by the Peruvian Minister on that same date (D. M. P., No. 30, and app. 10). On the 13th of March, 1833, the Ecuadorian Minister replied, acknowledging receipt of the ratified treaties and submitting certain observations on the subject of commercial reform, not, however, in any way related to the treaty of amity and alliance (D. M. P., No. 31).

The originals of the treaties of 1832 having been mislaid in the archives of the Ecuadorian Ministry of Foreign Relations, an authenticated copy was taken from the exemplifications in the Peruvian Ministry, by agreement of both governments, on the 26th of March, 1846. By the same instrument they agreed to put into execution the stipulations in those treaties, with certain explanatory additions having no reference whatever to the question of boundaries; treaties which, as was set forth by the President of the Republic of Ecuador on signing the agreement, "*were approved, ratified and exchanged in accordance with the constitution*" (D. M. P., vol. VII, app. 10, p. 315, and plates III to V).

4) **Importance of that Treaty to the Present Question.**—The treaty of amity of July 12, 1832—the only one negotiated with respect to boundaries from the birth of the State of Ecuador down

to the treaty of arbitration of 1887, and now existing—is of the highest importance to the present question, having annulled the treaty with Colombia of 1829, or confirmed its caducity, and recognized, although provisionally, the possessory status as of the year 1832, the year in which it was signed.

a) Confirmation of the caducity or nullification of the treaty of 1829.—The two questions requiring mention of the treaty of 1829 as having been in force—the settlement of boundaries and the liquidation of Peru's indebtedness to Colombia—were deferred by the treaty of 1832, without the slightest reference being made to the old treaty; with the difference, however, that, while the question of indebtedness was left pending until after the States arising out of the old Colombian confederation should place themselves in accord, the question of boundaries between Ecuador and Peru was left for a special convention between those States, without any allusion whatever to Colombia.

Article 14th of the treaty of 1832 states positively that: “While a *convention* is being negotiated for the settlement of boundaries *between the two States*, the present boundaries shall be recognized and respected.”

That was as much as to say that there was in existence no agreement as to boundaries; that the contracting parties could do as they pleased in that regard, and that, until the settlement should be made, they agreed to preserve the boundaries they then possessed.

That article is the confirmation of the caducity of the treaty of 1829, or, indeed, its absolute nullification.

The *caducity* was recognized, as we have seen, by the Plenipotentiary of Ecuador, Novoa, in his note of June 18th, while the negotiations were pending, and before the treaty of 1832 was finally drafted. He claimed for Ecuador the power to treat as an independent State in accordance with her constitution, and indignantly exclaimed: “Colombia is dissolved; the union is broken up. *Could any one claim that agreements made by Colombia could have any value whatever?*” That is, nevertheless, what Ecuador now claims in invoking the treaty of 1829 as being in force. Even though she should wish to repudiate the declaration of her then Plenipotentiary, the fact would remain that the treaty of 1832, by its failure to mention it, held the treaty of 1829 to be a dead letter, and proceeded as if it were not in existence.

Even if we assume that the treaty of 1829 did not lapse by the

dissolution of Columbia, the indubitable fact remains that, in the exercise of her sovereignty as an independent State, having the power freely to contract with other States, Ecuador *nullified that treaty*, and superseded it by another. The defence for Ecuador practically confesses its annulment when it says that the treaty of 1832 was not ratified because it prescinded from the legal basis of 1829, and, at least provisionally, substituted for that basis the possessory status. It is thus that it was ratified. Later one basis was substituted for another, and consequently the earlier one was annulled by the latter.

Whatever may be the difference between the two treaties, and however subtle may be the reasoning in support of the stability of the treaty of 1829, it cannot be denied that Ecuador possessed the right to agree with Peru as to *her boundaries*, and that she exercised that right, accepting the present boundaries until the matter should be definitely settled by a special convention, as to which she imposed no precedent, basis, proceeding or condition of any kind.

For one reason or another, then, under the principles of international law, the treaty of 1832 came to supplant that of 1829, and the latter remained only an historical reminiscence.

b) Recognition of the possessory status.—"While a convention is being negotiated for the settlement of boundaries between the two States," says the treaty of 1832, "*the present boundaries shall be recognized and respected.*"

What were the boundaries at that time with reference to the question? Those possessed by the provinces of Tumbes, Maynas and Jaén which formed part of State of Peru, and which were possessed and governed thereby, as shown in the preceding chapters.

Could the convention for the settlement of boundaries—reserved for later negotiation—effect a transfer of those provinces from Peru to Ecuador? That would be to assume that the States had agreed to a possible dismemberment of the State of Peru, an assumption incompatible with the very spirit of the treaty, which was, before everything, a treaty of recognition of both States as they were made up and constituted; and, under such an interpretation, it surely would not have been accepted by the representatives of those provinces in the Peruvian Congress by which it was ratified—provinces that most certainly were not, and could not have been, convoked for the formation and constitution of the State of Ecuador. It is

to be noted that when Ecuador was born, Peru had already passed ten years of her existence and had been recognized, as she was then constituted, by Colombia herself. Ecuador recognized the State already existing. Peru would not have recognized the new State, which she was under no obligation to recognize, at the cost of the segregation of her provinces.

The treaty of 1832 preserved, therefore, the possessory status, as well with respect to the territories of which the contracting States were composed, as with respect to their frontier boundaries; the final adjustment was left, for an indefinite period, to a special convention.

§II. Relations Between Peru and Ecuador From 1833 to 1857.

1) Attempts to Settle the Boundaries (1840-2).

a) *Diplomatic notes of 1840.*—Nothing of any particular importance occurred in the boundary dispute from 1832 until July, 1840, when the *Gaceta* of New Granada, published a note from the Ecuadorian government, stating that public opinion demanded "the peremptory fixing of the northern and southern boundaries." The Peruvian Minister of Foreign Relations on the 2d of November, addressed a note to the Ecuadorian Minister of Foreign Relations, stating that his government was not opposed to entering into negotiations from that point of view. "Ecuador and Peru," he said, "are reaping the benefit of peace. The boundaries in America, where patrimonial rights no longer exist, can be fixed only by virtue of the rule of *uti possidetis* with relation to the time of the birth of the new republics."

The Ecuadorian Minister replied by a note of the 16th of December, asking whether Peru were disposed to fulfil the stipulations in the *treaty of Guayaquil*; to which Peru replied that the *treaty in force* was that of 1832, approved and ratified by both governments and congresses (D. M. P., vol. VII, p. 309).

Here we have the first tentative put forth by Ecuador to resuscitate the treaty of 1829, as well as the firm position, assumed by Peru, invoking the treaty of 1832, which had replaced the earlier one, and referring to the *uti possidetis* at the time of the birth of the new republics, for the adjustment of the boundaries.

b) *Valdivieso-León conferences of 1841.*—This disparity in the points of view manifested itself in the conferences held at Quito in

December, 1841, between the Plenipotentiaries of Ecuador and Peru, Valdivieso and León, charged with the negotiation of such treaties as might be most appropriate for the purpose of insuring, on solid foundations, the good relations between the two States.

The question of boundaries was taken up at the second conference. Valdivieso, the Ecuadorian Plenipotentiary, proposed the following article: "The contracting parties recognize, as the boundaries of their respective territories, the same that were possessed, before their independence, by the ancient Viceroyalties of New Granada and Peru, the provinces of Jaén and Maynas to be in consequence *restored* to the Republic of Ecuador, with the same boundaries that confined them when they were in the possession of the Presidency and Audiencia of Quito, without prejudice to negotiation by convention of *reciprocal cessions and compensations* of territory by the two States. * * *

That was the first time, in a proposal for an agreement, that mention was made of the *restoration* of those two provinces by Peru—the treaty of 1829 not having gone that far—and the principle was revived on the assumption of Ecuador's right to resuscitate the Presidency of Quito in absolute disregard of all that had transpired, and doubtless in an effort to bring about the realization of Bolívar's scheme to "threaten Jaén in order to obtain Maynas:" to this end, then, being possessed of Guayaquil, the scheme of reciprocal "concessions and compensations" was suggested; no reference was made to the *small parcels* of territory to which the treaty of 1829 had been limited.

The Plenipotentiary of Peru, León, replying, agreed at once that the boundaries of the American republics should be determined by the *uti possidetis* of the time of the Spaniards, but that it is not established that it should be the *uti possidetis* accepted by those republics prior to the struggle for independence, that relating to the period subsequent to the independence being the safer; that the towns claimed by Ecuador have remained to form a nation with Peru, appointing their deputies and recognizing the judges and magistrates designated for their government and guidance; that it has always been evident that the province of Maynas was a dependency of the Viceroy of Lima, and that, by the principle of *uti possidetis* as proposed, Peru could also claim Guayaquil.

At the third conference the Ecuadorian Plenipotentiary proposed

a divisionary line similar in form to the one proposed by the Colombian government in the instructions to its Commissioners for carrying into effect the treaty of 1829, although without allusion to Tumbes. The Plenipotentiary of Peru opposed that line on the ground that the treaty of 1829 had lapsed with the dissolution of Colombia before the Commissioners had concluded, or even commenced, the operations for the adjustment of the boundaries (D. B. P., No. 17).

The discussion having become acrimonious to a point at which the Plenipotentiary of Peru retired, highly indignant over the insults he professed to have received, the conferees did not arrive at an understanding on that question or on others of greater political concern.

c) *The Charún-Daste Conference of 1842.*—The Governments of Peru and Ecuador, desirous of extricating themselves from the difficult situation resulting from that incident, agreed to a new conference. For that purpose Ecuador sent to Lima, as her Plenipotentiary, General Daste, and Peru designated her Minister of State, D. Guillermo Charún. At their meeting on the 13th of April, 1842, General Daste set forth the complaints of his government in terms of much violence, demanding "as a prerequisite to any settlement, that they should stipulate for the *immediate restitution* of the provinces of Jaén and Maynas, the only means by which the affront could be wiped out." In the face of such a demand the negotiations were broken off and the friendship between the two governments terminated. The Plenipotentiary of Ecuador entered into no discussion but imposed the restitution as a condition and only succeeded in adding one more proof that Peru continued in possession of Jaén and Maynas (D. B. P., No. 18).

2) *Confirmation, in 1846, of the Treaty of 1832.*—On the 26th of March, 1846, the Ecuadorian Minister of Foreign Relations and the Chargé d'affaires of Peru met at Quito, and, after agreeing on the form for the authentication of a copy of the treaties of 1832 to take the place of the originals missing from the archives of the Ecuadorian Ministry of Foreign Relations, agreed to make certain clarifying alterations in those treaties, rendered necessary by the events that had taken place. Those amendments related principally to the commercial treaty and one only pertained to the treaty of amity and alliance; the article dealing with the boundaries was left intact.

The President of the Republic of Ecuador, D. Vicente Ramón Roca, confirmed and approved the plan agreed upon for the execution of the articles referred to "in the treaties of alliance, peace, amity and commerce entered into between this republic and that of Peru through the medium of the proper ministers, and that they be approved, ratified and exchanged in accordance with the constitution" (D. M. P., vol. VII, p. 314).

3) Mutual Demands in 1853 Respecting Maynas.

a) *Peruvian enactment creating the Government of Loreto.*—By act of March 10, 1853, the Government of Peru "erects within the frontiers of Loreto a political and military government, independent of the Prefecture of the Amazonas, including therein the borders of the Amazonas and Marañón, from the boundaries of Brazil, and all the territories and missions located *south and north* of said rivers, in accordance with the principle of *uti possidetis* adopted by the American republics to which the Royal Decree of July 15, 1802, in a measure serves as a standard, and the rivers emptying into the Marañón, especially the Huallaga, Santiago, Morona, Pastaza, Putumayo, Yapurá, Ucayali, Napo, Yavary and others, together with their borders, in conformity with and as they are embraced in said Royal Decree." So reads the enactment.

Against it the Ecuadorian Plenipotentiary protested. The Peruvian Minister answered that his object had been to bring under a special government "all that territory which by *law and possession* belongs to Perú," under authority of the Royal Decree of 1802, and the principle of the *uti possidetis* of 1810 adopted by the Spanish-American republics, leaving it for special agreements to establish the courses of the divisionary lines (D. B. P., No. 20).

b) *Measure before the Ecuadorian Congress concerning the navigation of the Amazonian rivers.*—On the 10th of November, 1853, the Plenipotentiary of Peru at Quito protested against a bill brought before the House of Representatives, the first article of which provided: "Freedom of navigation is declared on the Chinchipe, Santiago, Morona, Pastaza, Tigre, Curaray, Naucana, Napo, Putumayo and other *Ecuadorian rivers* descending to the Amazonas."

The Peruvian representative based his protest on the fact that those rivers were not Ecuadorian but belonged to Peru by virtue of the Royal Decree of 1802, the principle of the *uti possidetis* of 1810 and an uninterrupted series of acts indicative of jurisdiction and possession.

The Ecuadorian Minister of Foreign Relations replied on the 9th of February, 1854, stating that the Royal Decree of 1802 "had been possessed of no legal force, that it had not been put into execution and ought not to have been fulfilled," as would soon be made clear along with other facts in the conferences about to be held for the amicable and definitive settlement of the question of boundaries (D. B. P., Nos. 21 and 22).

The fears entertained by Mosquera, the Colombian Plenipotentiary who had been charged with the execution of the treaty of 1829, lest, when he was preparing to lay claim to Maynas, the Royal Decree of 1802, thought to have been burned, should be brought into the case, had been realized. And Ecuador, who with such violence had demanded the immediate restoration of Maynas, and had made disposition thereof, theoretically, in her enactments as her own possession, was only able to answer Peru's protest by saying that the Royal Decree was lacking in legal force and had not been observed.

§III. Treaty of Peace and Amity of 1860 (Not Ratified).

1) **Ecuador's Agreement of 1857 Concerning the Cession of Territory in Settlement of Her Foreign Indebtedness; Military Occupation of Guayaquil (1858).**—Matters continued as they were under the treaty of 1832 until on the 21st of September, 1857, it occurred to Ecuador to enter into an agreement with the British holders of her foreign obligations, by which she was to make over to them "one million quarter sections in the Canton of *Canelos* in the eastern province on the banks of the Bobonaza river, reckoned from the point of confluence of that river with the Pastaza towards the west, at four reales* per quarter section."

The Peruvian Plenipotentiary protested against that agreement on the 11th of November, claiming that all of those lands belonged to Peru: 1st, by authority of the Royal Decree of 1802, a Spanish law; 2d, by reason of the principle of *uti possidetis* adopted as of 1810, and, 3d, as a result of the series of acts of jurisdiction and possession on the part of the Peruvian Government in those localities.

*The *Real*, at that period in Spanish-America, was worth about ten cents, gold.

The Ecuadorian Minister of Foreign Relations replied on the 30th of November, defending Ecuador's right in the matter on the ground that the Royal Decree of 1802 *was of no effect*, and that, consequently, there remained united with the province of Quito all of that immense expanse, the addition of which to the Viceroyalty of Lima had been *attempted*, and on the further ground of the application of the "*uti possidetis* of 1810, recognized by all the South American States, and among them Peru, in Article 5th of the treaty of 1829." Ecuador then interpreted that article as meaning the *uti possidetis* of 1810, not as she now interprets it, after it has been fully established that the Royal Decree was possessed of legal force and had been carried into effect.

The Peruvian Plenipotentiary rejoined at great length on the 9th of March, 1858, resting upon precisely that *uti possidetis* of 1810, "that which was adopted by all the republics of Spanish origin, that being the year in which their independence was, generally speaking, realized," a principle presupposing legality of titles, and to which, in this case, is added the will of the emancipated peoples.

The Government of Peru made its protests known to the representatives of Great Britain and the United States. From the former it obtained the assurance that "the government of her Britannic Majesty has no part whatever, or any interest, in the cession of lands to the English creditors" and regarded the contracts they had made with Ecuador as merely private agreements; and from the United States Peru secured the promise that the North American Government "would enter into no treaty or arrangement with that of Ecuador with respect to the acquisition of lands and the free navigation of rivers descending into the Upper Amazonas until the question as to boundaries between Peru and Ecuador should be definitively concluded" (D. B. P., Nos. 23, 24 and 25; D. M. P., vol. VII, app. No. 11).

The tenseness in the relations between the two governments increased until war broke out in 1858. Peru held Guayaquil by military occupation, and, for the purpose of releasing that port from such occupation and to re-establish peace, the preliminary convention of December 4, 1859, was signed and followed later by the definitive treaty of 1860.

2) **Object and Tenor of the Treaty of 1860, Known as the Treaty of Mapasingue.**—The treaty of peace and amity signed at

Guayaquil on the 25th of January, 1860, usually referred to as the treaty of Mapasingue, had for its object, as set forth in its preamble, the amicable composition by the two republics of their past differences, the resolution of pending questions and the settlement forever of the principles of their international rights.

The treaty affirms, in its first article, that the "relations of peace, amity, harmony and good understanding" are re-established between the two countries; and, after making various declarations by way of amends for past occurrences, the question of boundaries is taken up in the following terms:

"Art. 5th. The Government of Ecuador, mindful of the value of the documents submitted by the Peruvian negotiator, among which the Royal Decree of July 15, 1802, figures as the one of most importance in support of the right of Peru to the territories of Quijos and Canelos, declares *null* and of no effect the *adjudication* of any part of those lands to the British creditors, and that those creditors shall be indemnified with other territories, exclusively and indisputably the property of Ecuador.

"Art. 6th. The Governments of Ecuador and Peru agree to adjust the boundaries of their respective territories, and to appoint, within a period of two years, to be reckoned from the exchange of ratifications of the present treaty, a mixed commission which shall fix, in accordance with the observations made and the evidence brought before them by both parties, the boundaries of the two republics. In the meanwhile those republics accept, as such boundaries, those which are governed by the *uti possidetis* recognized in article 5th of the treaty of September 22, 1829, between Colombia and Peru, and which were possessed by the Viceroyalties of Peru and Santa Fe conformably to the Royal Decree of July 15, 1802.

"Art. 7th. Notwithstanding the stipulations in the two preceding articles, Ecuador reserves the right to substantiate, within the peremptory term of two years, her rights over the territories of Quijos and Canelos, at the end of which term, if Ecuador shall have failed to produce evidence sufficient to overcome and nullify the evidence submitted by the Plenipotentiary of Peru, Ecuador's rights shall be deemed to have lapsed and the rights of Peru over those territories shall become absolute."

That treaty, in its 31st article, nullified all treaties previously entered into by Peru with Ecuador, whether with the latter "as a division of the old Republic of Colombia or as an independent republic."

It was agreed, lastly, that the treaty should be operative from the time of its ratification by the Chief Executives of the two republics, without prejudice to its subsequent constitutional approval, at the proper time by the legislative bodies (D. B. P., No. 26).

3) **Its References to the Royal Decree of 1802 and to the Treaty of 1829.**—With respect to the question of boundaries, the treaty of 1860 may be summarized as follows: 1st, annulment of the adjudication of the Maynas lands which had been the cause of the war; 2d, recognition of the Royal Decree of 1802, by virtue of which the annulment was made; 3d, rectification of the boundaries between the two republics by means of a mixed commission; 4th, provisional acceptance of the boundaries derived from the *uti possidetis* of the treaty of 1829, conformably to said Royal Decree, and, 5th, reservation by Ecuador of the right to justify her claims over Quijos and Canelos within the period of two years.

As may be seen, Ecuador bows her head before the Royal Decree of 1802, which formerly she had rejected. And, as far as the treaty of 1829 is concerned, it was not invoked by the treaty of 1860 as being in force but merely in connection with the provisional acceptance of the basis of the viceroyalties, just as the parties could have adopted any other basis, and the basis of the viceroyalties was therein interpreted in the sense that the Royal Decree of 1802 conformed therewith, according to which all the territories of Maynas belonged to Peru.

4) **Legislative Disapproval of the Treaty; Declarations of the Peruvian Congress.**—Although the treaty of 1860 was ratified by the President of Peru, General Castilla, and by General Franco, the Chief Executive of Ecuador, it remained subject to the approval of the respective Congresses.

General Franco being deposed from power, a convention for the reconstitution of the country assembled at Quito. That body rejected the treaty and its approval was also denied by the Peruvian Congress by its act of January 27, 1863.

A committee of the Peruvian Congress rendered an opinion approved by that body in rejecting the treaty, that when the agreement was entered into by Ecuador she possessed no centralized government; that the Ecuadorian representative was endowed with no more powers than were possessed by the government of Guayas, one of the several governments existing in that country; that General Franco was merely the head of a party or faction; that the

convention and general government of Ecuador had disapproved the treaty, and that Peru should reject it also because of the fact that it contained stipulations repugnant to her sense of honor and prejudicial to her rights.

When the Peruvian forces arrived on the coast of Ecuador for the purpose of exacting the satisfaction due her for the outrages to which she had been subjected, the committee says, they found a country in the throes of anarchy, with several different governments struggling among themselves, and satisfaction given by a partial government, such as that of Guayas, is not sufficient reparation for outrages suffered at the hands of a general government.

"Another and less important cause of the war," the committee adds, "was the exaction from Ecuador of the recognition of Peru's rights to the territories of Quijos, Canelos and others, which had been aggregated by the Royal Decree of 1802. Was that object realized? Undoubtedly not, for in Article 7th of the treaty, the period of two years was allowed in which to search for and produce evidence. * * * Peru claims no more territory than would properly be hers under the principle of the *uti possidetis* of 1810, a principle which was accepted and recognized by the old Colombian republic in article 5th of the treaty of 1829. It remained only to ascertain what was that *uti possidetis*, and, once demonstrated by the documents exhibited by Peru, nothing more remained to be done than to exact from Ecuador her explicit recognition. The Royal Decree of 1802 and the documents that go to prove its execution, which were eventually found in the archives of the ancient government of Maynas, determined incontrovertibly the justice of the titles claimed by Peru."

The Congress proceeded with its objections to the other articles of the treaty and resolved in conclusion: "The treaty having been disapproved by the Government of Peru, as it has been by the Ecuadorian convention, both countries must return to the status in which they found themselves in 1858, that is, with a *casus belli* but a *casus belli* easily determinable by the negotiation of a treaty based upon justice, equity and honor, * * * taking into consideration the desires animating the peoples and governments of Peru and Ecuador to bring to an end for all time their discord * * * (D. M. P., No. 38).

5) Ecuadorian Act of 1861, Relating to Territorial Division.—On the 10th of March, 1861, Ecuador published her new consti-

tution, in which it was provided that "the boundaries of the Republic shall be definitively established by treaties to be entered into with the boundary States."

But, ignoring the treaty of 1860, and without waiting for the resolution of the Peruvian Congress, or taking into account that constitutional prerequisite, she enacted the law of May 29, 1861, concerning the division of territory, and including therein, as belonging to Ecuador, "lands situate in the Gobierno of Jaén, of the ancient Kingdom of Quito, the Cantons of Napo and Canelos, the territories comprising the Gobierno of Quijos as far as the Amazonas, in the Kingdom of Quito, and the territory of the Gobierno of Maynas."

The Peruvian Minister of Foreign Relations protested against that enactment on the 24th of August, reminding Ecuador that one State had no right to legislate respecting the dominion and property of another (D. B. P., No. 27).

§IV. Arbitral Convention of 1887 and the Direct Negotiations.

1) **Negotiation of that Convention.**—The treaty of 1860 rejected, the boundary question remained as it was. Peru continued in tranquil possession of Tumbes, Jaén and Maynas, with the same boundaries that were recognized in 1832. The two republics without entering into new agreements lived in perfect harmony until 1887, when their good relations were again disturbed by the same matter of the cession of territory arising out of the claim pressed by the "English Ecuadorian Land Company."

On the 25th of June, 1887, the Peruvian Minister of Foreign Relations wrote to Ecuador's Plenipotentiary at Lima, stating that, according to certain communications published in the *Diario Oficial* of Quito, his government appeared disposed to go forward with the projected agreement of 1857 with the British creditors, whereby that government ceded, in settlement of the indebtedness, land situated on the upper Amazonas belonging to Peru, and, as that action would be a revival of a matter *already settled*, he trusted that the Government of Ecuador would suspend its plans for settlement with those creditors until it might be known exactly what were the boundaries of its territory—until in fact the question could be finally resolved by treaty. The Ecuadorian Plenipotentiary im-

mediately replied that he would bring the matter to the attention of his government, whose response would doubtless be satisfactory, inspired, as it was, to bind closer "the fraternal ties of good understanding and loyalty existing between Ecuador and Peru" (D. M. P., vol. VII, app. 13).

In fact the Government of Ecuador did agree to *suspend* all action respecting the Canelos lands, and so notified the English Company in its official note of July 13, 1887, in which it stated that that action was the result of a demand on the part of Peru growing out of the fact "that the territories of the two republics had not been defined," and promising that it would bring about a *delimitation* as soon as possible, to which end it would propose to the Peruvian Government "either the negotiation of a *treaty* for the settlement of boundaries, or that the matter be submitted to the *arbitral decision* of an impartial government—such, for instance, as that of Spain" (D. M. P., vol. VII, app. 14).

The governments of the two republics placed themselves effectively in accord, whereupon their representatives signed at Quito on the first of August, 1887, the so-called *arbitral convention* by which "the questions of boundaries pending between the two nations" was submitted to His Majesty, the King of Spain "for his decision as Arbiter of the *right*, definitively and without appeal." That convention was ratified by the respective Congresses and ratifications were exchanged at Lima on the 14th of April, 1888 (D. B. P., No. 1; D. M. P., vol. VII, p. 363).

Leaving for consideration further on the study of the *arbitration*, in which we shall examine into the meaning of the expression "pending questions" and ascertain the powers of the arbitrator, we confine ourselves now to the statement that that convention expresses the desire of both parties that the matter shall be decided in accordance with the *merits*, and this without imposing any criterion whatever or mentioning any previous treaties, although the parties are authorized in the 6th article, at any time prior to the *arbitral decision*, to come to an agreement or compromise through the medium of direct negotiation.

2) The García-Herrera Compromise of 1890 (not ratified).—By virtue of the above-mentioned authority, the Ecuadorian Government made to the Government of Peru on the 1st of October, 1888, a proposal for the appointment of a mixed commission, in compliance with the provision of the treaty of 1829, in order to

bring about a direct settlement, and that the Government of Colombia should be invited to participate in the arbitration. The Peruvian Government replied that the arbitration was absolutely an arbitration of right; that one of the points for decision would be whether the treaty of 1829 was or was not in force, and that the action of the arbitrator could not be trammelled by any limitation. As to the participation of Colombia in the arbitration, it did not think that advisable, as it would tend toward complications, the questions involved between that country and Ecuador being of a very different nature from those involved in her dispute with Peru. The Government of Ecuador persisted on the 29th of December, limiting its request, however, to a direct discussion at Quito in order to see whether they could arrive at an amicable *compromise*. That proposal accepted, D. Arturo García and D. Pablo Herrera were appointed for that purpose as the Plenipotentiaries of Peru and Ecuador, respectively. They met at Quito in October, 1889, the former accompanied by D. Alberto Ulloa, Secretary of the Peruvian Legation, and the latter by D. Honorato Vazquez, Under Secretary of Foreign Relations.

Twelve conferences were held between the Plenipotentiaries between the 28th of October, 1889, and the 2d of May, 1890, on which day they signed the treaty bearing their names. The field of their first discussion was as to what each regarded as the strict *right* of the case. The Ecuadorian Plenipotentiary leaned for support upon the treaty of 1829, which he interpreted in the sense of the *uti possidetis* of 1810, and without taking into consideration the Royal Decree of 1802. Peru, on the other hand, set up that decree and insisted on her right to the retention of Jaén and Tumbes. But, convinced that they would not be able to agree as to the strict rights involved, they passed on to the field of compromise, finally reaching an agreement.

The agreement arrived at consisted in the settlement on a divisionary line beginning at the Santa Rosa inlet, followed along the rivers Sarumilla, Alamor, Chira, Macará, Canchis and Chinchipec to their confluence with the Marañón, and, from that point, along the Marañón, the Pastaza, the Pinches, various other rivers and artificial lines, and the Putumayo, as far as the frontier of Brazil—that is to say, the province of Tumbes was somewhat diminished, the province of Jaén was left to Peru, and there were taken from Peru the territories of Canelos and a large part of the ancient Comandancia general of Maynas. This was almost the realization of

Bolívar's scheme and the hopes of the negotiations of the Columbian treaties, none of whom had attained their ends.

As a result of the dispute over Canelos, Peru had gone to war in 1858, she had submitted her demands of 1887, and had negotiated a Spanish arbitration, and, with that arbitration still pending, her Plenipotentiary signed, by way of *compromise*, a treaty in which, not only Canelos, but a considerable part of Maynas is abandoned.

How may such a compromise be explained? The Plenipotentiary of Peru, D. Arturo García, defends it in a memorial by saying: "*Arbitration means war*, paradoxical as the statement may appear. Arbitration in absolute form, unlimited as to the subject matter to be agreed upon, and based on strict right, admits of only radical solutions in the great dispute in which we are engaged. * * * War! But does the Peruvian live who would go to war to conquer a few leagues of uninhabited territory * * * and employ therein the forces, the moneys and the blood of the Republic when *we have on the south* greater interests to defend, more sacred rights to uphold and more tremendous perils to avert?" He alluded to the situation in which Peru found herself with relation to Chile in consequence of the war on the Pacific coast. And that is the only thing he had to say in extenuation which could serve to lessen the severity of the judgment respecting that negotiation.

The Congress of Ecuador at once ratified the treaty of June 18, 1890. It was also ratified by the Peruvian Congress on the 25th of October, 1891—*conditionally*, however, for two important modifications, requiring further negotiation, were introduced with respect to the Amazonas region, and on these Peru insisted in its resolution of October 25, 1893. The Peruvian Congress, which looked with disfavor on the compromise, resolutely opposed giving Ecuador an entry to the Amazonas and the acceptance of the proposed line between the Napo and the Putumayo.

The Ecuadorian Congress, holding that such modifications essentially varied the proposal for the treaty, withdrew its ratification on the 25th of July, 1894, at the same time charging the executive power to start further direct negotiations (D. M. P., No. 41).

3) **Supplemental Arbitral Convention of 1894 (not ratified).**—On the 13th of August, 1894, the Colombian Government thought it necessary to intervene in the direct negotiations between Ecuador and Peru because of the right it believed itself to possess

that part of the territory lying between the Napo and the Caquetá, or Yapurá. Its intervention accepted, the representatives of the three governments held several conferences at Lima, resulting in the *supplemental arbitral convention* of December 15, 1894. By that convention Colombia acquiesced in the arbitration submitted to the King of Spain in 1887, stipulating that the Royal Arbitrator should render judgment as to titles, not only on arguments of *law* but also with a view to the *accommodation* of the contracting parties, so that the divisionary line should be based on *law* and *equity*.

The supplemental convention was ratified by the Congresses of Colombia and Peru, but not by that of Ecuador, which declined. Ten years passed without action, whereupon the Peruvian Congress withdrew its ratification on the 29th of January, 1904 (D. M. P., No. 43).

The direct negotiations being regarded as at an end, Sres. Cornejo and Valverde, as representatives of Peru and Ecuador, agreed in the protocol of February of that year that the Spanish arbitration, which had been suspended, should proceed (D. M. P., No. 48).

V. Résumé of the Boundary Question from 1830 to 1904.

The boundary question, during the 74 years intervening between 1830, when Ecuador was born, and 1904, the year in which it was agreed that the Spanish arbitration should be proceeded with—that is to say, what Peru calls the *Ecuadorian* question to distinguish it from the Colombian question—may in our judgment be summarized as follows:

1st. Between Peru and Ecuador no treaties have existed with reference to the question of boundaries possessing the force of law other than that of Lima of July 12, 1832, and the arbitral convention of August 1, 1887. The others never passed beyond the stage of projected treaties because of their failure of approval or ratification.

2d. The treaty of 1832 is that by which the States mutually recognize each other as then constituted, each respecting the other's possession of the provinces of which they were composed. The settlement of boundaries is left for a special agreement, both states in the meanwhile to retain their "present boundaries." No condi-

tions, however, are imposed for the negotiation of such an agreement, nor is any mention whatever made of the Colombian treaty of 1829, which was thereby nullified, unless, indeed, it had not already been nullified by the disappearance of Colombia.

3d. The treaty of 1832 continued in force because it was not annulled, and, even though it be regarded as having been broken by Peru's military occupation of Guayaquil in 1858—which we do not believe to be the case, since the good relations between the two States were re-established without the aid of a definitive treaty of peace, and that continuance of good relations was tantamount to a mutual recognition by the States as then constituted—it would in any event result that it produced the effect of their mutual recognition as constituted, and because of its nullification by the war; it is clear, anyway, that the treaty of 1829 was also annulled, assuming that it ever was in force.

4th. The possessory status recognized in 1832 has been preserved during this long period of time, except on the occasion of the transitory occupation of Guayaquil by Peru; the latter continued in the possession of her component provinces of Tumbes, Maynas and Jaén.

5th. The special agreement for the settlement of boundaries to which reference is made in the treaty of 1832 was not entered into, all of the proposals advanced before and after the agreement to arbitration of 1887 having been rejected.

6th. Through those proposals Ecuador brought about, by means of a "compromise," the realization of Bolivar's scheme, set forth in his letter of 1822, to finesse with Jaén in order to obtain as much as he could of the ancient Comandancia general of Maynas and extend along the coast of Tumbes.

7th. The relations between Peru and Ecuador have been those of mutual respect, and even cordiality, in spite of such aspirations, and excepting the incidents referred to. Especially was this the case from 1861 to 1887, when it may be said that the question of boundaries was decided by the tacit consent to the maintenance of the possessory status, and when, also, for the purpose of the renewal by Ecuador of the projected agreement with her creditors, it was felt to be necessary to make the *delimitation* to see whether part of the territory of Maynas (with which Ecuador sought to satisfy those creditors), could be disposed of; whereupon they agreed upon the present arbitration.

8th. Underlying the arguments by Peru and Ecuador in their diplomatic notes and conferences in support of their claims, we see recognized the principles of the "colonial *uti possidetis*," although interpreted differently as to date and application to the diverse colonial circumscriptions.

When in the chapters that follow we shall have set forth the principles of international law in accordance with which, in our opinion, the boundary dispute should be resolved, we shall have completed our deducing of the conclusions to be reached from the history of the formation of the States of Peru, Colombia and Ecuador and our study of their treaties and relations.

CHAPTER VIII.

Principles of International Law.

(The Colonial "Uti Possidetis")

SUMMARY:

- I. The doctrine of international law.—1. Necessity thereof as a basis.—2. The nature of its doctrine; questions of territoriality and delimitation.—3. Principles of international law applicable to the present case.
- II. The principle of colonial *uti possidetis*.—1. Its significance.—2. Its rational foundation.
- III. Adoption of the principle by the Spanish-American States.—1. Central America.—2. South America: *a*) general declarations; *b*) concrete questions; between Colombia and Venezuela (1881), between Bolivia and Chile (1843 and 1863) and between Bolivia and Peru (1902).
- IV. Its recognition in disputes over Peruvian boundaries.—1. By Colombia.—2. By Ecuador and Peru.
- V. Determination of the date of the colonial *uti possidetis*.

§I. The Doctrine of International Law.

1) **Necessity thereof as a Basis.**—If, even when treaties in force define in their texts the bases for settlement of conflicts between two States, the doctrine of international law must be resorted to as a means of interpretation or construction, it is absolutely necessary, when those bases are not set forth therein, as happens in the present case, to appeal to that doctrine in order to weigh the facts, estimate the value of the legal precedents and establish the fundamentals for the decision.

The arbitral convention of August 1, 1887, committing to His Majesty, the King of Spain, as Arbitrer of the *right*, the resolution of the boundary question pending between Peru and Ecuador, assigns no bases whatever, nor does it give the slightest indication that could serve as a criterion for his decision, but left him fully at liberty in respect of his appreciation of the justice of the matter.

Prior to that convention, no treaty had been ratified, other than that of July 12, 1832, which recognized and respected "the present

boundaries" of that time, and left their final adjustment "for a special agreement," without, however, prescribing either a basis or a criterion for such adjustment. That treaty, as we have said, nullified the treaty of 1829 with Colombia, or confirmed its caducity, for, if the later treaty had held the earlier one to be in force, or had wished to make use of it as a model for the special agreement mentioned, it would so have stated.

2) **Nature of that Doctrine; Questions of Territoriality and Delimitation.**—In such a situation, it is essential that we should set up a basis on which to solve the questions at issue in accordance with the doctrine of international law. And what is that doctrine? That which corresponds to the nature of those questions and is possessed of such requisite soundness as will enable it to serve as the foundation of the justice of the arbitral award.

We shall not at this time specify those "pending questions," on which the decision of the Arbitrator should be centered. That is a subject we shall examine into later in dealing with his competency and powers. But we do say that, taking the case as a whole, and following the method adopted in our study up to this stage, two questions have been developed which, although intimately related, are quite distinct, and which, for greater clearness, we shall distinguish as the question of *territoriality* and the question of *delimitation*.

We understand by the question of *territoriality* that which refers to the right of property or possession in a given territory, considered *uti universitas*, as a geographical unity or circumscription, or the groundwork of a political or administrative entity; and we understand by the question of *delimitation* that which relates to the fixing of a divisionary line circumscribing or marking the contour of that territory and separating or differentiating it from contiguous territories. It is clear that the divisionary line once fixed, the question of territory is solved, and thereby the question of boundaries, divested of that ambiguity with which it has been so much abused; but it is no less evident that the question of territoriality may be resolved without arriving at an adjustment of that divisionary line.

The doctrine of international law, therefore, applicable to the problem in its entirety, is that which relates to the territoriality and delimitation of States. But it deals with States of colonial extraction, formed out of territories and entities formerly belonging to

Spain, and it was inevitable that disagreements should have arisen among the States as a result of their formation and connection with the past, because of which the general doctrine of international law has become specialized with regard to the origin of the Spanish-American States.

As a result of that very specialization and the necessity for resolving similar problems in numerous States and the considerable time already elapsed since their origin, the doctrine of Spanish-American international Law has been gradually elaborated and established. It is at once theoretical and practical and affords a sure basis for an appropriate judgment.

This doctrine is an application of the general principles of international law, but confirmed by treaties and agreements, declarations by the governments, diplomatic negotiations and actual facts, forming a sort of jurisprudence governing the Spanish-American peoples. And the doctrine is also the resultant of the history of Peru's relations with Colombia and Ecuador.

3) **Principles of International Law Applicable to the Present Case.**—To our mind four principles go to make up the doctrine of international law applicable to the case: 1st, the colonial *uti possidetis*; 2d, the sovereignty of emancipated peoples; 3d, continuous possession from the time of the birth of the States, and, 4th, the recognition of their personalities in international relations. The first two principles constitute the special doctrine of territoriality and delimitation of the Spanish-American States; the last two are general in character.

§II. The Principle of Colonial *Uti Possidetis*.

1) **The Meaning of the Principle.**—*Uti possidetis* was the term used in Roman law to designate the *interdicto* of retention of possession which the Praetor pronounced, using the formula: *Uti eas aedes de quibus agitur, nec vi, nec clam, nec precario, alter ab altero possidetis, quominus ita possideatis vim fieri veto*—"As ye possess the buildings (or lands) referred to, without having obtained possession thereof, one from the other, by force, or clandestinely, or by sufferance, I forbid that ye be hindered in continuing so possessed," or, in briefer form: *Uti possidetis, ita possideatis*—"As ye possess, so may ye possess."

By virtue of that interdiction, the party holding was protected in his possession, which was most advantageous for the party in possession in the event of litigation, because the *Institute* says: "It is better to possess than to claim" (*commodius est possidere potius quam petere*). "The advantage of possession consists in this, that even though the property does not belong to him who possesses it, if the claimant cannot prove his own ownership, the possession will remain in him who holds it" (*commodum autem possidendi in eo est, quod, etiam si ejus res non sit qui possidet, si modo actor non potuerit suam esse probare remanet suo loco possessio*); and "for that reason, when the rights of both litigants are obscure, the judgment is usually against the claimant" (*propter quam causam, cum obscura sint utriusque jura, contra petitem judicare solet*). Now we have before us the great legal value attached to possession, much greater in international relations because of the respect due to the sovereignty of the State exercised in the territory possessed.

The term expressing that interdiction, *uti possidetis*, has been adopted by international law to designate the principle "of the preservation of the possessory status" and is used chiefly in treaties of peace. Bluntschli regards the expression as incorrect, on the ground that the principle does not refer to possession under private law but to "territorial sovereignty," and the treaty of peace is not limited to the recognition of possession as temporary after the manner of the Roman interdiction but as the definitive status in which the peace is founded (*Le Droit International codifié*, Art. 715 r). But it is certain that the formula *uti possidetis, ita possideatis*, or simply *uti possidetis*, serves to express the recognition and respect for possession in international relations.

The principle of *uti possidetis*, says Valenzuela, was introduced in the mutual relations of American republics of Spanish origin by the treaty of Bogotá of 1811, entered into by the United Provinces of Venezuela with the United Provinces of New Granada, wherein the parties obligated themselves to recognize and respect, as the boundaries between them, those which had been possessed by the Captaincy general and the Viceroyalty bearing those names.

The principle of "colonial *uti possidetis*" signifies, then, the recognition of the possessory status in which the provinces or regions were found when they were colonies and the continuity of the same when emancipated and forming independent States.

2) **Its Rational Foundations.**—It is easy to understand that in the emancipation from Spain of her American regions and provinces, they adopted the principle of *uti possidetis*, preserving the territories and boundaries of the colonial régime and recognizing them reciprocally as the territories and boundaries of the new States they constituted.

Colonies and States partake in common of the character of *peoples* who live in a determinate *territory* subject to a common *government*. Those peoples change in system by the emancipation, converting themselves from subject peoples into peoples wholly free, but they continue to be the same people, historically formed upon the territory on which they establish themselves. The regions and provinces of the Spanish colonial régime commenced by being *territorial* demarcations, established by the Kings of Spain by conquest, civilization and general government according to the needs of the times and the requirements for their care. Within the demarcations peoples began to form themselves on the nucleus of the Spanish population, which extended and mixed with the indigenous races; and it is natural that the peoples of one demarcation having property and interests in common, having formed their social relations, and, during three centuries, having lived under a common régime, should wish to continue united after succeeding, also by their united efforts, in achieving their independence.

The great colonial circumscriptions called viceroalties and captaincies general were converted by the revolution into independent states, constituted from *the provinces* formed under the colonial régime which had become the true unities of the social life and administration of the people, especially after the creation of the intendencies. The contour of those viceroalties and captaincies general, marked out by the frontier boundaries of the provinces, became as a general rule that of the new States, except in cases of voluntary union or separation, of which we shall speak further on.

§III. Adoption of that Principle by the Spanish-American States.

1) **Central America.**—The northern boundary of the ancient Captaincy general of Guatemala naturally established the line between Mexico and the provinces constituting that captaincy general which were proclaimed independent in 1821. They formed in 1823 the five United States of Central America: Guatemala, Salvador, Honduras,

Nicaragua and Costa Rica, accepting for their boundaries, respectively, those possessed as Spanish provinces at the time of their emancipation. Honduras, while embraced in the federation, declared, in her own constitution of 1825, that her territory was that of the Bishopric of that name.

By the treaty of March 15, 1825, entered into between the Republics of Colombia and Central America, the parties mutually guaranteed the integrity of their territories "on the same footing" as that on which they found themselves before the war of independence.

The principle of colonial *uti possidetis* has been the one invoked in the boundary disputes arising among those republics of Central America from the time they separated in 1838, such as that between Costa Rica and New Granada, and that ultimately settled by His Majesty, the King of Spain, on the 23d of December, 1906, between Honduras and Nicaragua. The award was based upon the consent by both parties, in the treaty of Tegucigalpa of 1894, that "it should be understood that each republic was the owner of the territory which at the date of the independence constituted respectively the provinces of Honduras and Nicaragua."

2) South America.

a) *General statements.*—We have already stated that the treaty of Bogotá of 1811 was looked upon as the origin of the principle of colonial *uti possidetis* in South America. By that treaty the United Provinces of Venezuela and the United Provinces of New Granada, by way of compromise, agreed to recognize and respect, as the boundaries between them, those possessed by the Captaincy general and Viceroyalty so named.

Colombia maintained the principle, applying it to the year 1810, in which began the insurrectionary movement that brought about the treaty. The Minister of Foreign Relations of that republic declared before the Congress in 1823, while discussing the American confederation: "That, in order to guarantee the independence and integrity of the territory, the *uti possidetis* of 1810 should be adhered to according to the territorial demarcation of each captaincy general or viceroyalty erected into a sovereign State." In like manner another Minister, D. Manuel Restrepo, expressed himself in his memorial concerning foreign relations, written in 1827, and, with even greater precision, D. Carlos Martín, Secretary of Foreign Relations, declared in another memorial as follows: "All those American nations that depended upon Spain, the mother country, have

admitted as the basis of their adjustments of boundaries the *uti possidetis* of 1810—that is to say, the demarcations determined upon as *distinct portions* of American territory by valid acts, by laws, by the right of the ancient common sovereignty; the force of which is recognized by all. To none of them has it ever occurred to impugn the validity of a decree or order of the Spanish monarch on the subject of boundaries under the pretense that, notwithstanding his rulings, the government of the ancient viceroyalty or captaincy general usurped portions of territory adjudicated to a neighboring nation” (B. P., p. 73).

The attempt is made in the American Congress assembled at Lima in the year 1848 to form an American confederation composed of New Granada, Ecuador, Peru, Bolivia and Chile, and the plenipotentiaries of those republics signed at the time a treaty, which, however, did not reach the stage of final ratification, but in which it was stipulated that: “The confederated republics declare themselves to be possessed of a perfect right to the boundaries of their territory as possessed *at the time of their independence* by the respective viceroyalties, captaincies general or presidencies into which Spanish America was divided.”

b) *Concrete questions*.—The question of boundaries arises between the United States of *Colombia* and the United States of *Venezuela*, and, in their treaty of arbitration, signed on the 14th of September, 1881, whereby the decision was committed to His Majesty, the King of Spain, they agreed as a basis that: “All of the territory belonging to the ancient Captaincy general of Caracas by *royal acts* of the ancient sovereign *down to 1810*, continues to be the jurisdictional territory of Venezuela, and all that which by similar acts *at that date* belonged to the jurisdiction of the Viceroyalty of Santa Fe continues to be the territory of the United States of Colombia.” On that basis the award of the Royal Arbitrator of March 16, 1891, rests.

Other boundary disputes arise between *Bolivia* and *Chile* and they likewise invoke the colonial *uti possidetis*. The Bolivian Minister states to the Santiago government in 1843, in the dispute over Mejillones: “It would be idle to remind Your Excellency that, in the matter of boundaries, the American States recognize the ancient demarcations established by the mother country.” Another Bolivian Minister declared before the Congress of Oruro in 1863 in the dispute over Paposo: “By that *royal decree* of October 10, 1803,

it is ordered that Paposo, and its ports and adjacent coves, be aggregated to the jurisdiction of Peru—a sovereign disposition weakening in every particular the jurisdictional acts exercised by Chile since that date, and which constitutes an incontestible right in favor of Bolivia.” And, relative to that conflict, the Chilean Minister of Foreign Affairs states to the Congress: “It is sought to establish the boundaries which during the Spanish régime separated the Audiencia District of Charcas” (B. P., p. 74).

Bolivia is also engaged in a boundary dispute with *Peru*, which, by the treaty of December 30, 1902, is under submission to the arbitration of the Argentine Republic, and it is agreed that it shall be settled in such manner that “all the territory belonging in 1810 to the jurisdiction or district of the ancient Audiencia of Charcas, within the limits of the Viceroyalty of Buenos Aires, by virtue of the acts of the ancient sovereign, shall belong to the Republic of Bolivia, and that all the territory which at that time, and by virtue of acts of the same authority, pertained to the Viceroyalty of Lima, shall belong to the Republic of Peru.”

The colonial *uti possidetis*, then, is the principle accepted by the Spanish-American republics, with reference to the date or act of independence and to the manner in which it was determined by the acts of the Spanish sovereign in the different portions of territory of the colonial jurisdictions.

§IV. Its Recognition in the Question of Peruvian Boundaries.

1) **By Colombia.**—In Bolívar's instructions transmitted by the Colombian Minister, D. Pedro Gual, in December, 1821, to D. Joaquín Mosquera, for the negotiation of the treaties with the new States, among them Peru, he directed them to insist on the preservation of the integrity of the respective territories “as they were defined in 1810. * * *”

The treaty between Colombia and Peru signed by Mosquera and Monteagudo on the 6th of July, 1822, specifies no principle whatever, but respects the *status quo*, leaving for a special agreement the demarcation of the *exact* boundaries.

That agreement was entered into by Mosquera and Galdeano in December, 1823. In it were recognized as the boundaries of the respective territories “the same that were possessed in the year

1809 by the ex-Viceroyalties of Peru and New Granada." The agreement was not ratified by the Colombian Congress for the reasons already given.

The above-mentioned Colombian Minister, D. Pedro Gual, in the instructions given to General Sucre on the 30th of June, 1825, for the reopening of the negotiations, says: "The Executive of Colombia has adopted, as a rule of conduct, in all his boundary negotiations with other American powers, *an adherence to the uti possidetis of the time in which they emancipated themselves from Spain.*"

In the peace agreement signed at Girón on the 28th of March, 1829, it is stipulated that a commission shall be appointed to settle the boundaries, "the political division of the Viceroyalties of New Granada and Peru, *in August, 1809*, when the revolution of Quito broke out, to serve as a basis. * * *

The definitive treaty of peace of September 22, 1829, signed by D. Pedro Gual as Colombian Plenipotentiary, stipulates that both parties recognize, as the limits of their respective territories, "the same that were possessed by the ancient viceroyalties *before their independence.* * * *

2) **By Ecuador and Peru.**—The treaty of mutual recognition of 1832 between Peru and Ecuador left the settlement of boundaries to a special agreement without assigning any principle.

When in 1840 the Government of Peru addressed itself to the Government of Ecuador for the purpose of proceeding with that settlement, it stated that the boundaries would have to be determined in accordance with the principle of *uti possidetis* "with reference to time of the *birth* of the new republics."

In the conferences held in 1841 the Ecuadorian Plenipotentiary proposed the "*uti possidetis* prior to the independence" to which the Plenipotentiary of Peru replied that it would be safer to abide by the *uti possidetis* "subsequent to the gaining of independence."

The Peruvian Minister, replying to Ecuador's protest against the Peruvian enactment of 1853 creating the government of Loreto, based his position on "the Royal Decree of 1802 and the principle of *uti possidetis* of 1810, adopted by the Spanish-American republics." This stand was also taken by the Peruvian representative in Ecuador on the occasion, during the same year, of the protest against the Ecuadorian law concerning the Amazonas rivers, and was again assumed in 1857 in protesting against Ecuador's project to cede Maynas territory to her English creditors.

For that reason the Government of Ecuador declared that it would rely on the *uti possidetis of 1810*, which was that referred to by Article 5th of the treaty of 1829, and the Government of Peru, having previously based its answer on the *uti possidetis of 1810*, replied that it is "the principle that has been adopted by all the republics of Spanish origin, that being the year in which, in most cases, their independence was realized."

The peace treaty of 1860 following the hostilities which broke out over that question provided that a mixed commission should adjust the boundaries, accepting provisionally those resulting "from the *uti possidetis* recognized in the treaty of 1829," conformably with the Royal Decree of 1802. The Peruvian Congress opposed its ratification, among other reasons, because the *uti possidetis of 1810* being recognized and by virtue of the Royal Decree, it was not necessary to leave the matter pending the production of further evidence.

In the direct negotiations following the arbitral convention of 1887, the Plenipotentiaries of Peru and Ecuador, D. Arturo García and D. Pablo Herrera, met at Quito to negotiate the treaty of 1890 (which did not reach the stage of ratification), and took up the discussion of the question of strict right. They agreed that the principle of colonial *uti possidetis* must apply, but conceived the application to be as of different dates: the Plenipotentiary of Ecuador favoring *the year 1810*, which signified, in his judgment, the status of right created by the royal decree of 1717; and the Plenipotentiary of Peru as of the period *prior to the independence*, under the authority of the Royal Decree of 1802. It is to be noted that the Ecuadorian Plenipotentiary accepted the *uti possidetis of 1810* as being "that recognized in the treaty of 1829 and by America as a whole."

In the conferences of 1894 for the negotiation of the supplemental arbitral convention, and which also failed of ratification, the Plenipotentiaries of Colombia stated that, by virtue "of the principle of Spanish-American public law known as the *uti possidetis of 1810*, the States emancipated from the Spanish colonies hastened to declare in the first moments of their emancipation, that the frontier lines of their colonial territories should continue to be the same that had divided the colonial entities one from the other *at the time of the proclamation of their independence in 1810*." The Ecuadorian Plenipotentiary stated that in the award rendered by Spain in the dispute between Colombia and Venezuela, "it is recognized as an incontrovertible truth that the boundaries of the Spanish-American

States are those possessed by the respective territorial circumscriptions in the colonial epoch." We have already shown that that award of 1891 was founded upon the basis of the *uti possidetis of the year 1810* agreed to by the parties in accordance with the *royal acts* of the ancient sovereign. And the Peruvian Plenipotentiary explained how "the American principle of colonial titles of 1810" should be understood and applied (D. M. P., vol. II, pp. 28, 42 and 59).

In the present *Arbitration* Ecuador has asked for the principle of colonial *uti possidetis*, but antedates it to apply to the period of creation of the Audiencia of Quito and the Viceroyalty of New Granada, for the purpose of securing, in their entirety, the territories then assigned to those demarcations. Peru accepts the colonial *uti possidetis* as fixing the boundaries of the provinces of which she has been composed since her birth as a sovereign State in conformity with the boundaries possessed by those provinces at the moment of independence.

SV. Determination of the Date of the Colonial *Uti Possidetis*.

From the foregoing exposition, it results that all of the Spanish-American republics have accepted the colonial *uti possidetis* as the basis of the adjustment of the boundaries of their respective territories on which they have been constituted as sovereign States. But in setting up that principle, the three following forms are employed: the *uti possidetis of 1810*; that of the *moment* of the emancipation, and that *prior* to the independence.

The *uti possidetis of 1810* is the term most generally adopted in South America, because first used in the Bogotá convention of 1811 between New Granada and Venezuela, and the year 1810 having been that in which the insurrection broke out in the greater part of the Spanish dominions in South America. Colombia caused that term to prevail throughout her internal and foreign relations. But it must not be forgotten that Spain had suppressed the insurrection in New Granada in 1816; that the union of the provinces of New Granada and Venezuela was not accomplished until 1819; that Quito continued in the power of Spain until 1822, and that Guayaquil, independent from 1820, was not incorporated in Colombia until 1822. The year 1810, therefore, did not correspond to the fact of Colombia's birth as a State composed of the provinces of Venezuela, New Granada and Quito.

The provinces of Central America did not emancipate themselves until 1821, when, more advisedly, they adopted the term "*colonial uti possidetis of the time or date of the independence*," which served as the basis of the recent settlement of the boundary question between Honduras and Nicaragua in 1906.

And, furthermore, when, in the American Congress of 1848, the representatives of the various republics of the south—New Granada, Ecuador, Peru, Bolivia and Chile, met to form a confederation, they also accepted the *uti possidetis* of the *time* of the independence.

The term "*before the independence*" employed in the Guayaquil treaty of 1829 amounts to the same thing, since it must be understood as of the ultimate moment of colonial *dependency* and not as of the date of the creation of the Viceroyalty of Santa Fe by the royal decree of 1717 in disregard of subsequent decrees modifying the territorial demarcation, as Ecuador now claims the right to do.

It is to be noted that when the Ecuadorian Minister of Foreign Relations replied on the 30th of November, 1857, to Peru's protest against the projected adjudications to the English creditors, he used the expression "the *uti possidetis* of 1810, recognized by all the South American states, and among them Peru, in Article 5th of the treaty of 1829" (D. B. P., No. 24). And, at the second conference at Quito on the 4th of November, 1889, which was attended by D. Honorato Vazquez, the plenipotentiary of Ecuador stated that no other basis could be adopted than "the demarcation of the ancient viceroyalties, that is, the *uti possidetis* of 1810, recognized by Peru in the treaty of 1829 and by all America," adding "that the arbitral convention (the present one) also had that object in view" (D. M. P., vol. I, p. 270). Later it becomes evident that Ecuador interprets the treaty of 1829 in the sense of accepting the *uti possidetis* of 1810, however much her representative afterwards, in the same conference, maintained that the *uti possidetis* of 1810 was the one established by the royal decree of 1717 creating the Viceroyalty of Santa Fe.

The principle of *uti possidetis* carries with it the idea of *continuity* in possession. The very words show this: *uti possidetis*—"as ye possess," not "as ye were possessing"; *ita possideatis*—"so may ye possess," or may continue possessing. That is the significance of the formula of the Roman Praetor in the interdiction for retention of possession; that is the significance of the international

law term, as a recognition of the present status of possession, for the purpose of continuing in possession, not in a provisional sense but definitively, as stated by Bluntschli; and that is also the significance for the emancipated peoples who would, on their constitution as independent states, continue in possession of the same territories and boundaries held by them as colonies.

To antedate possession to an earlier status, distinct from that existing at the date or moment under consideration, is to alter the very nature of the principle.

The peoples who emancipated themselves in 1810 would naturally adopt that date, but not Peru who remained faithful to Spain until 1820, who proclaimed her independence in 1821 and only achieved it in fact in 1824.

Is it desired to establish a common date for all peoples interested in the question with which we are now concerned? Then fix upon *the year 1820*, in which the troops of General San Martín entered Peru, when Peru rose in insurrection and the uprising was generalized, when it became possible for Colombia to constitute herself and for Guayaquil to achieve her independence. The events in Quito in 1809, 1810 and 1811 were unimportant; they did not have the character of secession, nor did the domination of Spain cease for a moment over that province—it continued under the rule of the Spanish authorities until 1822, after the battle of Pichincha.

General Sucre criticises the term *before the independence* employed in the treaty of Guayaquil in 1829, and remarks, as we have shown: "Referring to the boundaries possessed by the two Viceroyalties at the time of achieving their independence, it has been left obscure because Peru proclaimed herself independent in the year '20, New Granada in the year '10 and in both epochs the revolution itself *extended the authority of the Viceroy of Peru*. For this reason I established (in the convention of Girón) those possessed in the year 1809, which was a period well understood" (M. P., vol. II, p. 97).

Sucre, then, interpreted the treaty of 1829 in the sense of the *uti possidetis of the time* of the independence and was apprehensive only lest, by the extension of the authority of the Viceroy of Lima during the war over the provinces of the Viceroyalty of Santa Fe, the State of Peru might claim the right to spread out her boundaries to the prejudice of Colombia. But that danger does not exist, since Peru claims no more than that which belonged to the

Viceroyalty by colonial law and that which belongs to her as a state by the will of the peoples of whom she was constituted.

Whether we rely on the principle of *uti possidetis of 1810* or *1820*, or of the respective dates of *independence*, Peru can invoke in her favor the colonial titles for the determination of the boundaries of the territories corresponding to the boundaries of which she has been composed from the time of her birth as an independent state.

CHAPTER IX.

Principles of International Law.

(Sovereignty of Emancipated Peoples.)

SUMMARY:

- I. The principle of the sovereignty of emancipated peoples.—1. Explanation of the principle.—2. Its differentiation from the principle set up by Rousseau.—3. It is not opposed to the principle of nationalities.—4. The Spanish-American states formed by the voluntary union of colonial provinces.
- II. Acceptance of that principle by the Spanish-American states, in general.
- III. Its recognition by the states interested in the question at issue.—1. By the old Colombian Republic.—2. By Ecuador.—3. By Peru.

§I. The Principle of the Sovereignty of Emancipated Peoples.

1) **Explanation of the Principle.**—The principle of the “sovereignty of emancipated peoples” means that as soon as the colonial peoples by their own force break the ties of dependency upon the mother country, they can do as they please; they can either constitute themselves into independent states, unite among themselves to form a common state, or incorporate themselves within other states.

Subordinated to that principle is that of colonial *uti possidetis*, for if the latter served as the basis for the constitution of the new states, it was not by the imposition of the mother country, or as a result of the obligatory force of colonial law, inasmuch as those states were born out of the struggle against Spain, but because they accepted that principle and proclaimed it voluntarily.

By the acceptance of the colonial *uti possidetis*, the territoriality of the colonial entities, with their boundaries, was recognized, but only so far as those entities voluntarily concurred also in the formation of the new states; those were united which had been separated under the ancient régime (as in the case of New Granada and Venezuela), or passed from one circumscription to another (as in the case of Guayaquil, Jaén and Cauca). In uniting or sepa-

rating themselves, their respective territories and boundaries went with them.

It is by virtue of the sovereignty acquired by emancipation that viceroyalties and provinces could unite or separate themselves for the purpose of forming new states on the complete disappearance of the colonial empire.

2) **Its Differentiation from the Principle set up by Rousseau.**—

- This principle is not a resuscitation, as has been supposed, of *the theory of the social contract* of Jean Jacques Rousseau, by which society and the state were formed by the mere agreement of individuals.

States have their birth in two ways: one, *spontaneously* by the successive grouping of families, tribes, cities, districts and regions, unconsciously proceeding to form social organisms, increasing with each accession and rendering more and more compact their social relations; and the other, *reflexive*, as in the case of social organisms already in existence, dependent or independent in political system, where they unite, separate, incorporate or make themselves autonomous.

One of the means of giving reflexive birth to states is the *emancipation* of colonial peoples by their own efforts, and not by concession from the mother country, or foreign intervention, and, when that happens, since emancipation signifies the acquisition of *sovereignty*, the peoples make use of such sovereignty to constitute themselves into an independent state, or to incorporate themselves within another already in existence, or to form with other peoples, who, in their turn, have become emancipated, a state comprising various of the ancient colonial circumscriptions. All depends on their volition having remained equally free since breaking the bonds with the mother country.

3) **It is not Opposed to the Principle of Nationality.**—Neither is that principle hostile to the so-called “principle of nationalities,” or to the theory of “national states” upheld by Mancini, Padelletti and Pierantoni in Italy, Laurent in Belgium, Welcker and Bluntschli in Germany, Franz Lieber in the United States, etc. It is true that the nation “does not spring into existence, but builds itself, and builds itself slowly”; it is also true that for each nationality there should be a corresponding state, in order that the political and juridical life should correspond to the real conditions of the social life; and it is true, furthermore, that when the national

state is formed, it must preserve the unity of the country and the integrity of the territory.

But how was it possible to speak of national states at the birth of the Spanish-American states by the emancipation of the colonies, and much less maintain that the audiencia of Quito constituted "a nationality" with Jaén and Maynas? Neither were the nationalities formed when the war of independence broke out, nor can that doctrine be appealed to for the purpose of opposing the voluntary unions or separations of the peoples which had been united or separated under the colonial régime, inasmuch as those actions being *voluntary*, they must be considered as the expression of the sentiments and aspirations of the peoples.

Whatever of the theory of nationalities may be pertinent to that question results favorably to Peru. The unity of territory and the community of moral life are principle factors in the nation. Therefore, it is enough to glance at a map in order to recognize that the province of Jaén is an integral part of the unity of Peruvian territory; it penetrates like a wedge between its provinces and bounds with Ecuador on the north, its narrowest side, along the Canchis, a continuation of the line of the Macará. Its desire to unite with the Viceroyalty of Lima as a result of its connections, affections, interests and customs was demonstrated in the proceedings leading up to the royal order of 1784, authorizing its incorporation in that Viceroyalty. As to Maynas, it is enough to remember that the Royal Order of 1802 was occasioned by Quito's practical abandonment of the region, required by its lack of means for its proper care and the impossibility of intercommunication, for it was necessary to cross over the Andes and penetrate into impassable localities, and also by the advantage derivable from its restoration to the Viceroyalty of Lima, with which communication could be maintained by means of the rivers and greater care given to conservation and development.

When the war of independence broke out, the province of Maynas formed a part of the Viceroyalty of Lima and the province of Jaén occupied the position of waiting for the fulfillment of the royal order of incorporation. Maynas and Jaén fought side of side with the Peruvian provinces to achieve their independence. Is it strange, then, that on the birth of the State of Peru, they should manifest their volition to belong to that state and not to any other?

4) **The Spanish-American States were formed by the Voluntary Union of the Colonial Provinces.**—We have already seen how the colonial administration, established primarily on the basis of the audiencias, was later organized by provinces, each constituting an entity perfectly defined by the unity of government under the intendent. That substitution of the audiencial for the provincial system responded to the needs of the peoples, who, though in the beginning had found themselves isolated in great units of territory, were afterwards augmented in number and population, their social relations restricted and each possessing interests in common differing from those of the others, and, for that reason, while the audiencia district did not cease to be a territorial demarcation, the province, in the last moments of Spanish dominion, was a social unity of peoples besides being a governmental and administrative organism.

The province was possessed of perception, and even consciousness, of its personality; and thus we see how it was manifested and made effective when the agitation in America began, by the organization of juntas and declarations of a political character, now in protest against the intruder Joseph Bonaparte, now in support of Ferdinand VII, now in favor of adhering to the constitutional régime of the mother country.

That which at first was a political movement develops into an insurrection. The viceroys and captains general of Spain fall from power or find themselves without forces with which to check the revolt; the provinces become free and *unattached*, delivered over into their own control, they proclaim themselves independent, and unite among themselves to make that independence effective and to form new states. Bearing in mind all that we have been moved to say in regard to the formation of those states, it will be seen how they were brought into existence and how they were obliged so to constitute themselves by the union of colonial provinces and in the exercise of their sovereignty. This is further demonstrated by the very names at first chosen by them: United Provinces of Central America, United Provinces of La Plata, United Provinces of Venezuela, United Provinces of New Granada, etc., and, in the first constitution of Peru, in its declaration that all its provinces, *united* in a single body politic, form the Peruvian nation.

If, then, the provinces possessed that personality, and were really the factors of the new states, how can a province, which by its own efforts has achieved its independence and finds itself in the

plenitude of its sovereignty, be denied the right to preserve its independence, as Guayaquil sought to do, or to belong to Peru, as was the desire of Jaén, which from the first had ranged itself by the side of that state?

The principle of the sovereignty of emancipated peoples carries with it the right of colonial provinces to constitute themselves into independent states, or to pass from one to another of the circumscriptions of the ancient régime in order to form part of a new sovereign personality.

§II. Acceptance of the Principle by the Spanish-American States, in General.

That the Spanish-American states have accepted the principle of the right residing in emancipated peoples to constitute themselves into such states, is proven conclusively by the fact that they have so constituted themselves without relying wholly on the ancient territorial divisions of the colonial régime.

Mexico recognized the political independence of the Captaincy general of *Guatemala*, which depended on her Viceroyalty, when they formed the Central American federation and when they erected themselves in sovereign states.

The confederated states of *Rio de la Plata* also recognized *Paraguay* and *Uruguay*, notwithstanding they formed part of the Viceroyalty of Buenos Aires.

Bolivia (upper Peru), which depended upon the Viceroyalty of Buenos Aires down to 1810 and on the Viceroyalty of Lima until her emancipation, was recognized by the State of Peru, while the latter was under the dictatorship of Bolívar, and by the Argentine Confederation. The Bolivian and Argentine governments disputed the title to *Tarija*, which, by the royal decree of 1807, had passed from the Intendency of Potosi to that of Salta, but that province resolved by the popular vote in December, 1826, to incorporate itself with Bolivia, and, after protracted negotiations, the *Argentine Confederation* recognized Bolivia's right to its retention.

The formation of the Republic of *Colombia* and the birth of the State of *Ecuador*, together with the claims of the latter respecting *Cauca*, are the best evidence of their acceptance of the principle of the sovereignty of the peoples.

§III. Its Recognition by the States Interested in the Question at Issue.

1) **By the Old Colombian Republic.**—The Republic of Colombia founded by Bolívar in 1819, by the union of the Viceroyalty of New Granada and the Captaincy general of Venezuela, was an express recognition of the principle of the sovereignty of the people, for thereby were united in a single state those two great colonial entities, each independent of the other in the last moments of the colonial régime.

Rendering tribute to that same principle, Colombia gladly accepted the incorporation of Panamá, which was resolved upon by the popular vote of that province at the time of the proclamation of its independence in November, 1821; and we have already observed the forces exerted by Bolívar to bring about the declaration by the electoral junta of the province of Guayaquil, annexing that province to Colombia in July, 1822.

The entire policy of Colombia in her relations with Peru was, as we have also noted, necessarily inspired by the desire to preserve the annexation of Guayaquil, from its inception based upon so weak a foundation that the voluntary character of the annexation was converted into an attitude hostile to the colonial titles favorable to Peru, titles which the latter invoked to the end that Guayaquil might be left free to choose between the two republics or to remain independent.

In the instructions given in 1821 through the medium of the Minister, D. Pedro Gual, to D. Joaquín Mosquera, for the negotiation of treaties of alliance and federation with Peru and other new states, Bolívar said to the latter (as we have heretofore stated, and, because of its importance, repeat): "The two parties bind themselves not to enter into any negotiations with the Government of His Catholic Majesty on the basis of their respective territories as they were delimited in 1810 * * * *unless that, by laws enacted subsequently to the revolution*, as has happened in Colombia, there be incorporated into a single state two or more captaincies general or viceroyalties." In the absence of such an exception, based as it was on the principle of the sovereignty of the people, the legitimacy of the Colombian state could not have escaped injury.

Colombia's relations with Peru were marked by entire cordiality down to 1827, the *status quo* of the possession of their respective

territories was maintained—that is to say, Peru respected the annexation of Guayaquil to Colombia, and Colombia respected the incorporation of Jaén in Peru. The Girón agreement of March, 1829, and the Guayaquil treaty of September of that year, preserved the same possessory status; the republics recognized their respective territories and left pending only the delimitation thereof, in which they were at liberty to make mutual concessions, not of provinces, but of such small parcels of territory as might be necessary to regularize the frontier line.

2) By Ecuador.—Ecuador is of plebiscitary origin, born of the separation from Colombia in May, 1830, of three departments of that republic: Ecuador, Azuay and Guayaquil, each of which declared itself independent and agreed to constitute jointly with the others a new state.

Not only in this way did Ecuador recognize the principle of the volition of the peoples in the formation of states, but she invoked that principle expressly and positively in support of the right of the inhabitants of Cauca to separate themselves from New Granada and unite with her.

The President of Ecuador accepted the incorporation by the proclamation of December 20, 1830, holding that “to be the expression of the general volition of those inhabitants, manifested in the minutes of a formal meeting * * * and that the voice of a people cannot be disregarded. * * *” The Ecuadorian Congress ratified the incorporation of Cauca in November, 1831.

Later, in 1832, the conferences at Ibarra were held between the representatives of New Granada and Ecuador for the purpose of deciding the question of boundaries, and, as set forth in the protocols of those conferences, the Ecuadorian commission (presided over by the Minister of State, Valdivieso) maintained that:

“On the dissolution of the compacts (giving birth to Colombia) by the secession of Venezuela and Ecuador, the *province* of Popayán regained *its sovereignty*, and, finding itself possessed of the power to exercise that sovereignty as might be most advantageous to its interests and security, *voluntarily incorporated itself* in Ecuador, in full enjoyment and exercise of its rights. Could any act be *more legitimate?* * * * Ecuador does not wish to retain Cauca by virtue of the possession of the year '10; its rights consist in the possession acquired by the *free incorporation of those peoples.* * * *

“Our principles are these: that peoples, like men, may unite and associate themselves * * *; that while the purpose and condi-

tions of the union maintain, the members do not possess the right to separate themselves except by concurrence in volition on the part of all, or a greater part thereof * * * ; that, on the failure of the object set up and of the fundamental laws of the compact, the bonds are dissolved, and the people possessing the elements essential to subsist and maintain themselves are restored to the possession of their pristine rights and to their full liberty to determine their own future; and if, in the exercise of those rights, the people of Cauca should wish to form a fourth state, * * * by what right could New Granada oppose that wish? And, if those people have possessed, and now possess, the right to erect themselves into an independent state, why should they not have the right, why have they not the right, under these circumstances, to *aggregate themselves to the state best suited to their convenience?*" (B. P., p. 75).

This same reasoning on the part of Ecuador concerning the province of Popayán, or the Department of Cauca, may be applied to the province of Jaén, incorporated voluntarily in Peru since the war of independence, and Peru's right to retain that province would be fully justified under the principle of the will or sovereignty of the people.

3) **By Peru.**—In none of the treaties entered into by Peru with Colombia and Ecuador has the restitution of Jaén and Maynas been spoken of; on the contrary, all have maintained the rights of the contracting parties to the possession of their respective territories.

When, at the conferences at Quito in 1841 the Ecuadorian Plenipotentiary, D. José Félix Valdivieso, maintained that the basis for settlement should be the restitution of Jaén and Maynas, in forgetfulness of the doctrine that he himself put forth in defence of the incorporation of Cauca, the Plenipotentiary of Peru, D. Matias León, replied that: "All the people, made up formerly a single family, part of the Spanish family, and when they undertook their independence and the formation of independent states, found themselves in the position of having to elect the course best suited to their interests and to adhere to that course; that the peoples claimed by Ecuador have remained from that time as a component part of the Peruvian nation. They have taken part in her good fortune and distress. They have agreed, in fine, to her social *contract* * * * and, far from finding themselves in discord with that association, those peoples have shown their acquiescence by continuing to belong to Peru, by appointing their delegates to her Congress, by receiving

the judges and magistrates named by Peru * * * and by having recourse to the Peruvian government with greatest good will for remedy in all cases of need" (D. B. P., vol. I, p. 63).

When in 1857 Ecuador proposed to cede to her English creditors a part of the territory of Maynas, and had replied to the protest of Peru, the Peruvian Minister resident at Quito rejoined on the 9th of March, 1858, stating that not only did the principle of *uti possidetis* justify the jurisdiction and undisturbed possession exercised by Peru in that region, but that she could call to her aid still other arguments of great weight in dealing with the question of the nationality of a territory. He continues:

"From the time when the Peruvian people constituted themselves a sovereign nation by the swearing of her independence, in that series of acts indispensable to the organization of the republic and which are the expression of the *popular voice*, spontaneously manifested, whether by the ballot box, whether by minutes of their meetings forwarded to the general government at Lima, whether by municipal necessity—in all those acts the inhabitants of the Comandancia general of Maynas have taken part as *Peruvians*, as citizens subject to and dependent upon the general government at Lima. * * * Review all the constitutions, from the first down to the last, in 1856, drafted by the government of the Peruvian Republic, and in all of them the *deputies of Maynas* appear as signatories; and all the authorities, civil, political, military or ecclesiastical, who have exercised their functions in the towns embraced therein, have derived their authority from the supreme authority of Peru" (D. B. P., vol. I, p. 122).

In the conferences held in 1894 for the negotiation of the supplemental arbitral convention, the Colombian Plenipotentiaries maintained that the *uti possidetis* of 1810 must be modified "by agreements for adjustment and reciprocal cessions in any particular instances in which the frontier of the colonial provinces might be notoriously incompatible with the exercise and development of the *autonomous* and *independent* existence of the new states. * * * Whereupon the Plenipotentiary of Peru expressed himself in the following terms, which may be considered as a résumé of the question:

"The colonial bonds severed, and the territory withdrawn from the domination of that will (of the common sovereignty), nothing remained to bind them but mutual affinities. No will could be superimposed over the will of the others; the right of each was equal

to the right of the others. Legally they stood like isolated elements out of which free nations must be constructed.

"That right of organization did not depend upon the name which the territory might have borne under the ancient régime. Whether known as a Viceroyalty, as were Santa Fe and Peru, or a Captaincy general, as were Venezuela and Chile, or a Presidency, as were Ecuador and Charcas, or Gobierno, as were Guayaquil and Jaén, it possessed *the right to mold its own destiny*, constituting itself independently, as did Peru and Chile, or confederating, as did Colombia, Ecuador and Venezuela, or annexing itself, as did Guayaquil to Colombia and Jaén to Peru.

"Free nations formed themselves in South America, and this was but natural and just in accordance with the *expressed* or *tacit volition* of the territories which had become independent, whatever may have been their hierarchical-political degree under the colonial régime.

"The American principle of *titles of 1810* does not affect that natural right of organization belonging to such territories. Its exclusive aim is to afford a means of determining the extent of the soil belonging to each free nation, in accordance with dimensions corresponding to the territory or territories constituting that nation, in conformity with the demarcations made by the sovereign and in force in 1810" (D. M. P., vol. II, pp. 28, 59, 60).

CHAPTER X.

Principles of International Law.

(Possession and Recognition.)

SUMMARY:

- I. The principle of "continuous possession for a long period of time."—
 1. Possession in itself; *jus et favor possessionis*.—2. Possession as a means of acquiring ownership; its conditions; *a*) legal possession; *b*) long period of time; *c*) absence of sufficient adverse claim.—3. Possession confirmatory of ancient rights, and originative of others.
- II. Recognition of the personality of the state in international relations.—
 1. The doctrine of the publicists.—2. Peru's treaties with Colombia (1822) and Ecuador (1832).—3. Treaties of Ecuador and Peru with Spain.—4. Pontifical recognition of Peru's sovereignty in Maynas.—5. Peru's treaties with Brazil.

§I. The Principle of "Continuous Possession for a Long Period of Time."

I) Possession in Itself; "*Jus et Favor Possessionis*."—Peru has continued in possession of her provinces of Tumbes, Maynas and Jaén from the time of her birth as an independent state down to the present day. Is that *possession* worth nothing? All the writers on international law agree in recognizing the importance of the possession cognizable by that law, and even go so far as to regard such possession as of greater importance than that cognizable by the civil law, for the reason that the injuries resulting from its disturbance are greater, and, in default of a common coercive power, a greater respect is due thereto.

Those writers who concede to possession under international law a lesser degree of effectiveness in the acquisition or loss of ownership, such as Kluber, Brie and Georges Frederic de Martens, recognize the rights and advantages (*jus et favor possessionis*) derived from possession *in itself*, according to the Roman tradition with respect to the preservation of the *status quo*, so long as no better title is set up, or war is not declared in due form.

We have already seen that those benefits were, according to the

Institute, that of continuing legally in possession; that of casting the burden of proof on the claimant, and that compelling a decision of the matter in litigation, in case of doubt, in favor of the party in possession, provided, however, that such party shall not have taken possession of the property by violence, or possessed himself thereof clandestinely or by the sufferance of another, and, as that is the situation in which Peru finds herself, it is clear that she at once profits by those benefits resulting from the *jus et favor possessionis*.

2) **Possession as a Means of Acquiring Ownership; its Conditions.**—The great majority of the authors (such as Grotius, Puffendorf, Phillimore, Vattel, Wheaton, Calvo, Bluntschli, Fiore, etc.) admit that prescription is cognizable in international law, either by analogy to civil prescription, or as a special prescription, or as invoking principles of justice, or for mere convenience. Even those who with more insistence defend the rights of ancient ownership, also recognize the influence of time in legal life, and the necessity for putting an end to the uncertainty of ownership by whatever means may be available for the settlement of international disputes, including war.

Without entering into an examination of that question in its purely theoretical aspect, we ought, however, to state that Peru's position unites the conditions most commonly exacted for prescription, and that they confirm the rights so solemnly based on the principle of colonial *uti possidetis* and the sovereignty of the peoples. Those conditions are: legal possession, the great lapse of time, and the absence of sufficient adverse claim by the alleged owner.

a) *Legal possession.*—Time is of such importance, and so necessary is the fixing of a rule in order to insure the peace of the peoples, that international law goes so far as to ignore the origin of possession in considering it as a means of acquiring ownership. Vattel said: "If it were possible to go back to ancient times, there would be few sovereigns who would be secure in their rights and peace could not be hoped for on earth." "What public rights, boundaries and possessions," asks Heffter, "could resist an exhaustive examination into the merits if they were not exempted therefrom by the judgment of history?" Bluntschli says that state of facts brought about by violence "is transformed by time into a legal status," and Frederic de Martens expresses the idea as follows: "The influence of time and the sanction of history impose silence

on all actions for recovery, and all impeachments of title justifiable on the ground of possession by violence and wrongs committed on the occasion of an augmentation of territory. * * * The act consummated, and shrouded in an immemorial antiquity, becomes valid in contemplation of international law."

But we are not dealing, in the present case, with possession acquired by illegal or violent means, but with that which has never been the subject of doubt under the common law as far as prescription is concerned—a possession under just title, and in good faith, and held to be legal—the possession enjoyed by Peru in Maynas, by virtue of the Royal Decree of 1802 and the principle of colonial *uti possidetis*, and in Jaén, as a result of the royal order of 1784 and the voluntary incorporation of its peoples at the very moment of their emancipation.

b) *Long period of time*.—The great majority of the writers insist that possession is confirmed by *time immemorial*, though not defined. Some, however, such as Savigny, construe *immemoriality* to be two generations, because of the possibility of securing the direct testimony of the present owner from his own knowledge and from that acquired from his predecessor. Other writers, such as Fiore, David Dudley Field, Bourgeois and Renault, prescribe the period of a *half century*. And, since no definite term has been reached by common accord among the nations, as was proposed by Vattel, it would seem that the interpretation of the expression "long period of time" must be left to the judgment of those before whom such disputes are brought for decision, in the light of the particular circumstances and conditions surrounding the point at issue.

Peru's possession in Jaén and Maynas dates from 1821, the year in which she was born as a state, conjointly with Jaén, which was incorporated with her the same year, and also with Maynas, which had already been a dependency of the Viceroyalty of Lima since 1802. More than *a century* has passed, then, during which Peru has been in possession of Maynas, and her possession, as a sovereign state, of Maynas and Jaén, has continued through a period of *eighty-six years*, or during *her entire life*. Hers is, therefore, a possession *ab initio*; it would be impossible to exact from her one of longer duration.

As to the *absence of possession* on the part of Ecuador, that also is coextensive with her life, or from her birth in 1830; and, since

she holds herself forth as the heir of Colombia, there may be added to that period the ten years of the latter's existence, during which she was not in possession of Jaén or Maynas.

Lately Ecuador has attempted to perform acts of possession in a certain locality in the northwestern part of the Amazonas region, after the present arbitration had already been agreed to, and doubtless in the belief that she could by that means make a showing before the arbitrator under more advantageous conditions. She established a detachment of twenty soldiers at Aguarico, which she pompously called a garrison, but which had to be supplied with provisions from Iquitos; and, because the Peruvian authorities interfered, Ecuador protested, characterizing that interference as a "blockade" (*bloqueo*). She sought to spread out along the Napo as far as Angoteros (1903) and Torres-Causana (1904), and the few soldiers composing the expeditions were put to rout or made prisoners. What value could such attempts have, when made pending a decision in the present arbitration—and frustrated as they were besides—in destroying the efficacy of Peru's constant and long-continued possession of what had been the Comandancia general of Maynas?

c) Absence of sufficient adverse claim.—From the careful historical statement we have made respecting Peru's relations with Colombia and Ecuador, it is clear that no claim in the nature of an action for restitution has been made by either of the republics.

Bolívar governed the provinces of Jaén and Maynas as integral parts of the Peruvian nation, and, when Peru broke with him, although their names and that of Guayaquil figured in the war manifesto—due, however, to other causes—and that war was brought to a close after its first stage by the Girón convention of 1829, it was agreed therein that Guayaquil should be restored by Peru, and nothing was said as to Jaén and Maynas; Colombia occupied the position of having been completely restored to her territory. Nor was mention made of those provinces in the definitive peace treaty of that same year.

Ecuador comes into being in 1830 and recognizes the state of Peru by the treaty of 1832, as it was then constituted, without any reservation whatever.

Occasionally Ecuador speaks of restitution in diplomatic negotiations undertaken for the settlement of boundaries; but it is apparent that this is done for the purpose of securing greater ad-

vantages in the settlement, and, that when the proposal for compromise is formulated, nothing is said about the restitution of those provinces.

And that constant *silence* concerning those provinces at the moment of signing the treaties and agreements—that is, on the occasions when protest would be essential to remedy the alleged illegality of the possession—is equivalent to assent on the part of Ecuador to the Peruvian possessory status. And Mably says that prescription operates “by the silence of the injured party when that party is *dealing* with a prince who possesses that which belongs to him, or sells, cedes or alienates it; silence on those occasions is equivalent to consent.”

3) **Possession Confirmatory of Ancient Rights and Originative of Others.**—Continued possession for a long period of time is not only effective in the acquisition of ownership, but also possesses the virtue of confirming ancient rights and creating new ones.

With possession the *jus meræ facultatis* becomes a reality; the right takes on a plastic form, “the exteriority,” of which Ihering speaks. The proof thereof, Boecler says, is reinforced as the bonds which unite the peoples are drawn tighter and their sovereignty is consolidated by means of its continued exercise. This is what has occurred in the province of Jaén, already united with Peru in customs, relations and affections at the close of the colonial epoch, united also during the war of independence, and which, from the moment of its voluntary incorporation, has made Peru’s social and political life her own, being constantly represented in her Congress and participating in her glories and misfortunes. Is it possible to break those ties and efface that history of *eighty-six years*, during which the volition expressed at the time of the incorporation has been persistently ratified and the sentiments arising from the possession of a common country continually strengthened?

The towns of the ancient Comandancia general of Maynas, governed by the Viceroyalty of Lima down to the last moments, and which struggled side by side with the insurrectionary government, which have been and now are represented in the Peruvian Congress, have grown and developed—some of them considerably, such as Iquitos—under the administration of Peru during those eighty-six years. And during that period also the efforts of Peru have resulted in the foundation of towns, in the organization of administrative systems, in the extension of civilization, and in the increase

of wealth, in territories heretofore deserted or sparsely populated, both to the south and to the north of the Marañón, bringing into existence thereby new relations and new rights. Do those efforts and that course of civilization, and the social, legal and political bonds that have been established stand for nothing? Certain it is that there still remains much to be done in the Amazonas region, but international law, which in general recognizes in states occupying *nullius* territories the right to pursue the work of populating and civilizing, and especially in the American republics by reason of their vast unpopulated dominions, cannot deny that right to Peru, seized as she is by perfect title, to wit, the Royal Decree of 1802, invigorated by the principle of colonial *uti possidetis*, as proclaimed by the Spanish-American states.

§II. Recognition of the Personality of the State in International Relations.

1) **The Doctrine of the Publicists.**—It is a current doctrine of international law that the recognition of the existence of the state implies the recognition of its personality as it appears to be constituted, together with all the rights inherent in that personality, in the foreground of which is that of sovereignty over the territory, considered as one and indivisible.

International law, says Bluntschli, does not create states but admits them as formed, respecting the results of their history. The admission of a new member into the family of nations is accomplished through its recognition by those already existing. "The formation of a new state carries with it the formation of a new *territorial sovereignty*," which is "the application of the sovereignty to the territory," being "the sovereign consequence necessary to the very existence of the state" (*Le Droit International codifié*, Arts. 28, 29, 276 and 291).

International law, as is also said by Fiore, applies to states without regard to their origin or formation. As a new state is formed and enters into relations with other states, it enters on the enjoyment of all the rights pertaining to any of the others, one of which is the exclusive right of sovereignty over the persons forming part of the actuality of its political organism, and also over the *territory* made up from all the regions inhabited by the peoples who have accorded recognition to the same supreme authority (*Tratado*

de Derecho Internacional público, vol. 1 and *Dictamen*—Opinions—among those contained in M. P., p. 201).

And Carlos Heimberger expresses himself in the following terms:

"The whole system of the existing states rests upon the reciprocal recognition of each one of them, * * * and, as the national territory is an essential element of the state, *the recognition of the state carries with it the recognition of its territory*; and, as that territory is, by its very conception, one and inseparable, the recognition of a state signifies the recognition of its territory *in its entirety*, without any consideration whatever of the historical manner of its formation or acquisition. * * * International recognition is, then, the legal basis on which is founded the entire possessions of the states recognized; the manner in which each of the parts of such possessions is acquired and the question whether it is or is not supported by legal title is immaterial. * * * A more difficult undertaking is the securing of recognition by a state aggrieved by an act of violence, * * * but, when it is confirmed, and the party dispossessed *expressly* or *tacitly* recognizes the acquisition, confirmed against its will, of a territory which had belonged to it, *from that moment, and for all time*, the possibility of doubt as to the legality of possession is excluded" (cited with high approval by the Marqués de Olivart in his book, *La frontera de la antigua Colombia con el Peru*, p. 313).

2) Peru's Treaties with Colombia (1822) and Ecuador (1832).

—When Peru entered into her first treaty with Colombia, in July, 1822, she was already organized with her provinces of Tumbes, Maynas and Jaén, forming, along with the others, a single body politic and a single sovereignty. And she was in like manner constituted when, in July, 1832, she negotiated her first treaty with Ecuador, who had just made her debut in history.

By those treaties Colombia and Peru, and Peru and Ecuador mutually recognized each other as independent states, together with their respective territories, and without any exceptions as to provinces—since, if such exception had been made, there would have been no such recognition, or they would have expressly so stated—leaving for special agreements the establishment of the exact boundaries, that is to say, the act of delimitation, and not the principle of territorial sovereignty over the provinces of which each of those states was made up. And in that situation Colombia and Peru remained, Peru and Ecuador likewise maintaining their mutual relations.

As we have gone into all this extensively we shall not pursue it farther, but simply recall, by way of additional evidence of recognition on the part of Ecuador, the fact of her having had a consulate at Iquitos, the capital of the Peruvian department of Loreto (the ancient Comandancia general of Maynas), a consulate which, among others, Ecuador abolished in 1905.

3) **Treaties of Peru and Ecuador with Spain.**—Article I of the treaty of February 16, 1840, between *Ecuador* and *Spain* stipulates that "His Catholic Majesty * * * *renounces* forever, for himself, his heirs and successors, in manner most formal and solemn, the *sovereignty*, rights and actions (*acciones*) which *belong to him* over the American territory known by the ancient name of the Kingdom and Presidency of Quito, and to-day, the Republic of Ecuador." And, in Article 2nd, the treaty adds: "In consequence of that *renunciation* and *cession*, His Catholic Majesty recognizes the Republic of Ecuador as a nation, free, sovereign and independent, composed of the provinces and territories specified in the constitutional act, to-wit, Quito, Chimborazo, Imbabura, Cuenca, Loja, Guayaquil, Manabi and the Gallápagos Archipelago, and also all other territories whatsoever legally belonging, or which could belong, to the said republic of Ecuador."

The defence for Ecuador relies upon those articles in support of the right possessed by that republic to all the territory of the Presidency of Quito, and sets up the recognition by Spain in making, in that treaty, renunciation and cession of her sovereignty over that territory; but Ecuador does not take into account: 1st, that Spain had already lost her sovereignty over that territory and could not, nor was it her intention to, distribute the territories among the new states as though they had continued under her colonial régime; 2nd, that, in speaking of the territory "known by the ancient name of the Kingdom and Presidency of Quito," the treaty did not refer to its extent when its Audiencia was created; nor did the treaty annul the Royal Decrees modifying the audiencia, and, 3rd, that, since she was not a party to it, the treaty did not obligate Peru.

On the 24th of September, 1853, the Plenipotentiaries of *Spain* and *Peru* signed a treaty, the first Article of which stipulates: "Her Catholic Majesty * * * *renounces* forever, for herself and her successors, in manner most formal and solemn, the *sovereignty*, rights and actions (*acciones*) which *belonged* to her over

the American territory known by the ancient name of the Viceroyalty of Peru, to-day the Republic of Peru." Article 2nd stipulates: "In consequence of that *renunciation* and *cession*, Her Catholic Majesty recognizes the Republic of Peru as a sovereign nation, free and independent, composed of the provinces, territories and adjacent islands she *to-day possesses*, and which formed the Viceroyalty of that name, and all other territories belonging to her, or which she may aggregate to herself hereafter."

But that treaty, recognizing Peru in terms similar to the recognition of Ecuador, was not ratified by Peru, because, among other reasons, the words "renunciation" and "cession" of the sovereignty were regarded as inappropriate. The Peruvian Minister of State said, in his note of December 12, 1853, to the Plenipotentiary at Madrid, that "the clause by which Her Majesty, the Queen, *renounces* the sovereignty, rights and actions belonging to Peru is offensive to us, in that it assumes that, without such renunciation, we should not have been independent, and it is opposed to the real condition of things and to the accomplished and existing facts"—this even though the Peruvian negotiator, who was really in accord with the treaty, as it did not signify that Spain conceded, but that she recognized, the independence, made the observation that, precisely for that reason, the treaty did not read "belong" to Spain (as in the treaty with Ecuador), but used the word "belonged," that is, having reference to time past. The truth is that that was one of the causes leading to the rejection of the treaty of 1853 (*Aranda's Colección de Tratados*, vol. IV, p. 117).

The treaty between Spain and Peru of August 14, 1879, consigning to oblivion all that had passed between them, and establishing substantial peace between the two countries, had no reason at the time to speak of the origin of the Peruvian state which had figured for so long a time as an international personality perfectly defined.

4) **Pontifical Recognition of the Sovereignty of Peru in Maynas.**—The Holy See recognized, in most positive terms, the sovereignty of Peru in Maynas on the occasion when it acceded to the petition of the Peruvian government for the reorganization of the Bishopric of that name, and gave to it that of Chachapoyas, which recognition was repeated in the eulogy of the bishops whom that government had brought before it for the administration of the diocese.

And we have already said that the Peruvian Congress, by the act of July 29, 1831, provided that previous to the Pontifical authorization, the Bishopric of Maynas, preserving its ancient demarcation, be known as Chachapoyas, and possess also the province of that name, and that of Pataz, which belonged to the See of Trujillo.

His Holiness, Gregory XVI, after opening the appropriate canonical proceeding, decided in favor of the request and erected the Bishopric of Chachapoyas in the Bull *Ex sublimi Petri specula* of June 2, 1843.

"Those who hold the *supreme command* in the provinces of lower Peru," says that Bull, "present to us their humble supplication that we shall be pleased to separate and dismember from the Diocese of Trujillo the provinces called Pataz and Chachapoyas and aggregate and incorporate them into the ancient Diocese of Maynas, and transfer likewise the episcopal see of that diocese to the city of Chachapoyas."

His Holiness erects the Bishopric of Chachapoyas for the reasons above set forth and adjudicates: "The city of Chachapoyas itself and *all* the other places constituting until now the *territory and diocese of Maynas*, as well as the territory at present constituting the aforesaid provinces of Pataz and Chachapoyas, which we have heretofore exempted and separated from the Bishopric of Trujillo and its jurisdiction" (D. M. P., No. 105).

It is to be remembered that the Gobierno and Comandancia general of Maynas was coextensive with the Bishopric of the same name.

5) **Peru's Treaties with Brazil.**—We have also indicated that Brazil, by joining in the treaty of October 23, 1851, recognized the personality of Peru and her right in the Amazonas region.

In accordance with Article 7th of that treaty, which accepted the principle of *uti possidetis*, there was established as the frontier "the town of Tabatinga, and thence a straight line running north to a point opposite the confluence of the Yapurá river with the Apaporis, and from Tabatinga southward along the Yavarí river from its confluence with the Amazonas."

Brazil has entered into other treaties and agreements with Peru confirming the recognition of her personality and her sovereignty over the Amazonas region; among them the diplomatic agreement of September 29, 1876, referring to the navigation of the Putumayo, is worthy of note.

In treating with Peru concerning the Amazonas territories and

rivers, the government of Brazil took into account the Royal Decree of 1802, as stated by her representative, D. Miguel María Lisboa in one of his conferences with the Plenipotentiary of New Granada, D. Joaquin María Nacentes de Azambuja, the signer of the agreement of 1876, in his memorandum addressed to the Department of Foreign Relations at Bogotá. And to the declarations of those two Brazilian diplomats must be added the following opinion rendered by Sr. Pereira Leal, also a Brazilian diplomat, in his memorial on the boundary treaty between that country and Venezuela (1860): "If any of the republics of which Colombia was formed could claim the right to contract with Brazil as to the boundaries along the Yapurá to its westernmost mouth, it would be Ecuador, but only as of the period *prior to 1802*. At that time the province of Maynas, and the towns of Quijos, extending in that direction, ceased to belong to the Presidency of Quito and were aggregated to the Viceroyalty of Lima, for which reason *Peru only*, who *is, besides, in possession* of said territory, has been the party legitimately entitled to treat concerning that territory" (B. P., p. 165).

CHAPTER XI.

The Powers of the Royal Arbitrator.

SUMMARY:

- I. The submission to arbitration and acceptance by the Royal Arbitrator.
- II. Questions submitted for decision.—1. Memorial presented to the Ecuadorian Congress by the Minister of Foreign Relations.—2. Statements made by the Plenipotentiaries of Peru and Ecuador before the Spanish Government in the course of diplomacy.—3. Ecuador's demands in the arbitral proceeding.—4. Peru's demands in that proceeding.—5. Opinions by Bourgeois, Renault, F. de Martens and P. Fiore.—6. Our opinion on this point.
- III. Criterion for the solution of the questions at issue.—1. Strict law.—2. No room for compromise.

§I. The Submission to Arbitration and Acceptance by the Royal Arbitrator.

The question of boundaries between Peru and Ecuador having been studied in the light of the history of the treaties and the principles of international law, we are now about to examine into the powers residing in the Arbitrator for its decision, and shall begin by disclosing the manner in which the arbitration was offered and accepted.

The arbitration is founded upon the *arbitral convention* signed at Quito on the 1st of August, 1887, by the Plenipotentiaries of Peru and Ecuador, and afterwards ratified by the respective Congresses, which ratifications were exchanged at Lima on the 14th of April, 1888 (D. B. P., No. 1).

In accordance with Article 1st, "the Governments of Ecuador and Peru *submit* said questions (the pending questions of boundaries) to His Majesty, the King of Spain, for his decision as *arbiter of the right*, definitively and without appeal."

The Peruvian Plenipotentiary, D. Juan M. Goyeneche, in the name of his government, and acting also under powers conferred on him by the Government of Ecuador, presented himself for the purpose of soliciting His Catholic Majesty's acceptance of the arbitration. His Majesty deigned to accept, as stated in the note of

December 14, 1888, addressed by his Minister of State to the Plenipotentiary. In that note the latter was advised that, conformably to the request submitted, the arbitration was "to adjust the *question* of boundaries *pending* between the two states" (B. P., p. 7). On the 10th of December, 1889, the representative of Peru, D. José Pardo y Barreda, presented to Her Majesty, the Queen Regent, the *Brief* for that Republic "on the question of boundaries with the Republic of Ecuador" (B. P., pp. 9 and 11).

By virtue of the provisions in Article 6th of the arbitral convention, and at the instance of Ecuador, the governments of the two republics entered into direct negotiations, which resulted in the García-Herrera proposal for compromise in 1890; and, pending the legislative approval of that compromise, the Ecuadorian Minister of Foreign Relations and the Chargé d'affaires of Peru met at Quito on the 9th of January, 1891, and agreed, at the suggestion of the former, to request His Catholic Majesty to suspend his award until the matter of the proposed compromise should be determined.

At that conference the representative of Peru stated that his government had fulfilled the requirement of filing its brief with His Majesty within the year agreed upon; and the Ecuadorian representative explained that, within that year also, in November, 1899, his government had delivered to His Majesty's Ambassador at Paris a statement wherein the appointment of a commission to effect a direct settlement, was petitioned for; but that that did not signify, as had been supposed, a failing in respect for the arbitration of His Majesty, in proof of which he would present, before the assembly of the Peruvian Congress, a further brief destined to facilitate the decision of the Spanish Sovereign in case he should be obliged to proceed with the arbitration. The two representatives agreed that, with the filing of the abovementioned statement of November 2, 1889, the arbitral proceeding should be understood as having been resumed "without prejudice, however, to the right of Ecuador and Peru to amplify their first statements at a proper time" (D. M. P., No. 42). Ecuador, in 1892, filed with His Catholic Majesty the further brief of which she had made announcement.

The direct negotiations broken off, the Governments of Peru and Ecuador, represented respectively by D. Mariano Cornejo and D. Miguel Valverde, agreed at a conference held in Quito on the 19th of February, 1904, to let the arbitration of 1887 proceed, and that

His Majesty should be requested to send a royal commissioner to gather the necessary data, but that this step should not be held to imply "any alteration whatever in the conditions established in the treaty of 1887, and much less the renunciation or modification of the titles or of the petitions and briefs filed with the Royal Arbitrator by the two parties." At that conference reference was made only to settling "the controversy over boundaries" between the two republics without specifying the questions or defining the powers of the arbitrator.

The Spanish Minister of State replied on the 27th of April, 1904, to the notes addressed to him by the Ministers of State of Peru and Ecuador as follows:

"I have the honor to inform your Excellency that your very courteous note of the 14th of March last reached my hands simultaneously with the note, identical in terms, addressed to me by the Minister of Foreign Relations of Ecuador on the 19th of February ultimo, both of which notes state that, by virtue of the stipulations in the protocol signed at Quito on the 19th of February of the present year by the representatives of the two republics, their respective governments have agreed to *request* His Majesty to be pleased to continue the arbitral proceeding confided to him by the convention of 1887 for the final solution of their pending *differences in the matter of frontier boundaries*, and which, on the demand of the parties, has been suspended since 1891. * * * In reply it gives me much satisfaction to announce that His Majesty * * * will gladly devote himself to the fulfillment of the honorable mission entrusted to him" (D. M. P., No. 48).

The arbitral proceeding resumed, both parties filed their *Final Memorials* setting forth their respective claims.

Before reaching a decision as to the basis of the matter, the Royal Arbitrator must examine into the *powers* with which he is invested, and determine what are the *questions* submitted for his decision, and the *criterion* for their solution in accordance with the terms and spirit of the arbitration.

§II. Questions Submitted for Arbitral Decision.

The arbitral convention of 1887 opens with a paragraph saying: "The Governments of Ecuador and Peru, desiring amicably to put an end to the *questions of boundaries pending* between the two

nations. * * * " And further along in that paragraph, Article 1st: "The Governments of Ecuador and Peru submit *said questions* to His Majesty, the King of Spain * * * ."

Let us see what those pending questions are as set forth in the declarations of the parties in interest, in the claims formulated in their briefs and memorials, and as developed in the history of the case.

1) **Memorial Presented to the Ecuadorian Congress by the Minister of Foreign Relations.**—In the memorial presented to the Congress of his country on the 10th of August, 1904, concerning the status of the country's foreign affairs, the Ecuadorian minister of Foreign Relations, D. Miguel Valverde, reported the resumption of the Spanish arbitration of the *questions pending* with Peru, and said that the rights of Ecuador rested on the immovable basis of the treaty of Guayaquil of 1829; that the question of boundaries in the eastern region, from the Brazilian frontier to the confluence of the Chinchipe with the Marañón, had been finally settled in accordance with that treaty, *leaving open*, relatively speaking, *only* the question of boundaries from that last mentioned point to the Pacific ocean, and that "the *Amazonian frontier*, having been determined upon, *is not submitted* to the arbitration of His Majesty, the King of Spain, under the terms of the convention of 1887." The defence for Ecuador, he added, has not made that very evident distinction until the present moment; but it is necessary that it should be established, to the end that "the Royal Arbitrator may know that between Ecuador and Peru there are *pending* no other questions of boundaries than those referring to the ancient territories of Jaén and a part of Maynas, from the mouth of the Tumbes river in the sea to the disembogement of the Chinchipe in the Amazonas."

In its executive sessions of September 23rd and 24th, 1904, the Ecuadorian Congress limited its action to resolving that the Minister's assertion should be taken only as a text for argument with Peru, without permitting it to derogate from the full legal claim originally made by Ecuador, and constantly adhered to (D. M. P., No. 52).

The Minister's statement, therefore, did not seem to the Congress to be sufficient, but it clearly indicated that the question of boundaries was not, in its judgment, based upon the terms he had supposed were agreed upon. The truth is that the protocol of February

19, 1904, which Minister Valverde himself had signed, did not mention the imposition of any such restriction on the arbitrator.

2) **Declarations of the Plenipotentiaries of Peru and Ecuador before the Spanish Government in the Course of Diplomacy.**—The Minister Plenipotentiary of *Peru*, the Most Excellent Sr. D. Felipe de Osma, in a *note* addressed to the Spanish Minister of State on the 12th of November, 1904, informed the latter that, at a conference held on the 3d with the Ecuadorian Plenipotentiary, he had stated, in the name of his government, that “the object of the arbitration is to decide to which of the two sovereignties belong the territories claimed exclusively by Peru and by Ecuador, and, consequently, to establish *the whole of the frontier line* between the two States.”

The Spanish Minister of State replied that he had received from the Ecuadorian Plenipotentiary a note bearing the same date. “Moreover,” he said, “inasmuch as in the latter the conditions under which the arbitration must proceed are not specified, as they are in your Excellency’s note,” I am sending him a copy.

A few days later, on the 21st of November, 1904, the *Peruvian* minister Plenipotentiary addressed to the Minister of State the following *note*: “In accordance with Your Excellency’s desires, I have the honor again to address myself to Your Excellency, *as I do at the same time* to the Most Excellent Envoy Extraordinary and Minister Plenipotentiary of *Ecuador*, to inform you that *the conditions of the arbitration of right agreed upon in 1887 have not been modified*, and that *all* the questions of boundaries pending between the two nations continue under submission to the Royal Arbitrator, since the protocol of February 19th of the present year, in which the Governments of Peru and Ecuador agreed to request His Majesty to resume his cognizance of the proceeding, and deign to send the commissioner referred to in the notes of the two governments addressed to Your Excellency on the 14th of last March, declares that that does not imply any alteration of the conditions established in the treaty of 1887 above referred to, and much less the renunciation or modification of the titles or the briefs filed with the Royal Arbitrator by the two parties; that the protocol was subscribed with the understanding that the petition for the appointment of a commissioner does not in any manner affect *the powers* belonging to the Royal Arbitrator to pass such orders as *he may deem proper* to elucidate the rights in controversy.”

As a *similar note* was sent in by the Plenipotentiary of Ecuador, there can be no doubt that the arbitration thereby became definitely established by the concurrence of the parties.

The Spanish Minister of State made this clear in his reply of the 23d, acknowledging receipt, as follows: "I have the honor to inform Your Excellency that I have received your esteemed note of the 21st instant, in which you are good enough to inform me that *the conditions* of the arbitration of right agreed to in 1887 *have not been modified*, and that *all* the questions of boundaries pending between the two nations continue under submission to the Royal Arbitrator" (D. M. P., No. 55).

3) **Ecuador's Demands in the Arbitral Proceeding.**—Once more in this arbitral proceeding Ecuador has formulated her various demands.

According to the statement filed in 1892 by D. Pablo Herrera, the functions of the arbitrator would be reduced to a carrying out of the Guayaquil treaty of 1829, which, in its sixth article, obligated the Governments of Ecuador and Peru to appoint the mixed commission to survey, rectify and fix the divisionary line in accordance with the stipulations of Article 5th, taking as a basis the royal decrees creating the audiencias and viceroyalties, but ignoring that of July 15, 1802. In D. Honorato Vazquez's memorial on the facts and law, which is made an integral part of that statement, the same demand is made. The divisionary line is actually set, and the author adds that the two governments can regularize that line by making mutual concessions, "observing in other respects the treaty of 1829 for the establishment of the demarcation of frontiers."

In her Final Memorial Ecuador demands the fulfilment of the supposititious Pedemonte-Mosquera protocol under which nothing remained pending but the question of Jaén.

4) **Peru's Demands in this Proceeding.**—In her *Brief* Peru asks for an advance ruling on the point of her rights with respect to the territories on the basis of the colonial *uti possidetis*, manifesting her willingness to relinquish her claim to Guayaquil in exchange for Ecuador's recognition of her title to Jaén, and maintaining that the boundaries of those territories should be the same possessed by the viceroyalties at the moment of independence, and demands the establishment of the divisionary line in accordance therewith.

In her *Final Memorial* she asks that Ecuador's demand for restitution be rejected in express terms, and that the frontier be fixed in

conformity with the divisionary line asked for in the brief. Preceding that demand appear various statements, among which we make note of the following (M. P., vol. IV, p. 154):

3d. That this action shall be decided with exclusive attention to the general principles of right, with the compacts existing between Ecuador and Peru, and with colonial law resorted to solely as a means of determining the extent of each of the boundary provinces.

4th. That Peru accepts the principle of colonial titles, in absolute independence, however, of the treaty of 1829—as a principle of *delimitation* exclusively and not as title to restitution. * * *

5th. That the claim of right to examine into the legality of her organization (as a state composed of provinces that freely entered into its formation) is repugnant to the independence of American nations.

6th. That, on their mutual recognition, the two states were recognized with the provinces held by them, and,

7th. That in Peru's opinion *the powers of delimitation conferred by the boundary arbitration may not be so extended as to change the nationality* which was freely chosen by the colonial circumscriptions calling themselves Jaén, Guayaquil, Tumbes and Loreto.

5) **Opinions by Bourgeois, Renault, de Martens and Fiore.**—Having been consulted by Peru, these eminent publicists have submitted the following opinions on the question with which we are occupied (volume of Legal Opinions filed with the Memorial of Peru):

Léon Bourgeois and Louis Renault, members of the Permanent Court of Arbitration at the Hague, are of opinion that the *arbitral convention* of 1887 arose as a result of the attempt of Ecuador to cede to an English company a vast territory located in Maynas; that the principle of *delimitation* is distinct from the principle of *organization* of states; that the claim of Ecuador would tend, not to *delimit* her territories, but to *dismember* and take from Peru entire provinces that have formed parts of that state ever since its constitution. "Is it conceivable that an *arbitration* could have such scope? What state would consent to submit to a judge, whomsoever he might be, the consideration of the conditions under which it was formed, the legality of the incorporation of such and such of its provinces? And, further, what *arbitrator* would accept the *responsibility of a decision* freighted with such consequences? * * *

If, in a *proceeding brought for the delimitation of boundaries*, such an issue could be foreseen, it would be singularly hazardous to resort to international arbitration" (*Ibid.*, pp. 132-143).

Frederic de Martens, also a member of that permanent court, says:

"It is evident that the *issue* before the August Arbitrator in the present arbitration is the determination of *the boundaries* left undefined between the present possessions of the parties litigant. It certainly is not the object of the arbitration to take from either of the parties its territorial possessions, or to adjudge certain possessions to either, to the detriment of the other. The arbitration should fix the line of demarcation between the present possessions of the two states; but it is not called upon to offer to one party, as a gratuitous gift, the territories possessed in fact and law by the other. From this point of view, it seems to us absolutely necessary for the arbitrator to take into consideration the conditions under which the contracting parties have constituted and developed themselves. *The arbitrator is not called upon to consider and adjudicate on the constitution of the states, or as to their sovereignty, or even their titles to territorial possession*, considered in conjunction with each other. His natural and legal function is limited to determining *the line of demarcation* which ought in the future to divide the territories of Peru and Ecuador, * * * without extinguishing the rights of territorial sovereignty conferred by the *uti possidetis* and the principles of international law" (*Ibid.*, pp. 165 and 166).

Pasquale Fiore maintains that, according to the principles of international law, according to the natural meaning of words and according to historical precedents, controversies between two states over *boundaries* can refer to nothing but the *delimitation* of those boundaries. According to international law, when treating of boundaries, the right of each of the states to territory—considered *universitas*—which constitutes the basis of their sovereignty, may not be gone into; the arbitrator may only adjudge *small parcels* of territory located on the borders in order the better to fix the divisionary line. According to the natural meaning of words, *boundary* signifies limits, confines, the line of separation or demarcation between two contiguous or neighboring territories; this is also its meaning according to historical precedents, because when it has been desired to inject into an arbitration questions of territories or territorial sovereignty, they have been expressly provided for.

"Throughout the history of arbitration," he adds, "it has never

occurred to any one to think that a constituted state submitting a controversy over frontiers to a final arbitration, could have had in mind to place in litigation its political organization and its rights over territories in which it is actually exercising its high dominion. History offers no instance in which a country submits to final arbitration the question whether it possesses the right to be a constituted state, as formed by the course of historical events, or whether, on the contrary, it ought to be dismembered and stripped of important and considerable territory that may become the property of a contiguous state under the pretext of a rectification of frontiers" (*Ibid.*, pp. 183 *et seq.*).

6) **Our Opinion on this Point.**—There can be no doubt that Ecuador's attempt, in 1887, to carry out her projected agreement of 1857 with the holders of her foreign indebtedness, by which she was to cede in payment the lands of Canelos, was the cause of the arbitral convention of August 1, 1887.

Shortly before signing that convention, on the 13th of July, the Ecuadorian Government informed the English company that all action in the matter had been suspended in consequence of the protest made by Peru, on the ground that "the territory of the two republics had not been *defined*." Ecuador promised to procure the *demarcation* as soon as possible, to which end she proposed to the Peruvian government "the negotiation of a boundary treaty or the submission of the *matter* to the arbitral decision of an impartial government, such, for example, as Spain" (D. M. P., vol. VII, app. 14). It is disclosed, then, by the declaration of Ecuador, that there existed for her at that moment no other necessity in the boundary question than that of making the *delimitation* by means of a treaty, or by submitting the matter to arbitration, in order that she might know whether or not she could dispose of those lands.

As much for that reason as because the two republics continued in the same most cordial relations—reciprocally respecting the boundaries they had possessed since their mutual recognition as states—Peru has asserted in her *Final Memorial* that "the questions that must be settled are those left *pending* by the rejection of the treaty of 1860—that is to say, whether Ecuador has or has not the power to alienate Canelos" (*Ibid.*, vol. III, p. 111).

We believe, nevertheless, that if the arbitral agreement had been confined to the Canelos affair, it would have been so expressly stated, when, in adopting the expression "pending questions of bound-

daries," it included *all* those not definitively settled. And the Royal Arbitrator so understood when he accepted the mission. He speaks only of "the pending questions of boundaries," or, in singular, *the question of boundaries*, which embraced in general all the special questions, even using the very word *all* as in his note of November 23, 1904.

Precisely because the treaty of 1860 was not ratified it remained the subject of agitation, as did the treaty of July 12, 1832, article 14th of which stipulated that "while an agreement for the *settlement of boundaries* is being negotiated between the two states, the present boundaries shall be recognized and respected."

Therefore, that *settlement of boundaries* between the two states has not been effected, and, since it has not been made, that is the settlement which is *pending*, the parties having agreed, in 1887, that it shall be undertaken by the Royal Arbitrator, in accordance with the right, since they had failed to come to an understanding thereto by direct negotiation, either on the merits or in the field of compromise.

The *pending question of boundaries* is, then, the question of the *settlement of boundaries*. If the arbitral agreement speaks, in the plural, of *pending questions*, it is because various questions are included therein, resulting from the fact that as the divisionary line has various sections, the settlement of each requires the application of special considerations.

Ecuador believes that the boundary question stands decided by the treaty of 1829, entered into between Peru and Colombia, and the supposititious Pedemonte-Mosquera protocol of 1830. But as nothing was said to the arbitrator, in arranging the conditions for the arbitration, either as to that treaty or as to the protocol, the arbitrator may not hold them to be a limitation of his powers, but rather *the foundation* of Ecuador's *claim*, which he must consider according to its weight, as would be done by a judge with respect to the claims set up in any law suit.

Moreover, Peru conceives that in her demands Ecuador oversteps the bounds of the arbitral proceeding, since by making it an action for restitution, the question of territorial sovereignty becomes involved in that of boundaries. The eminent publicists Bourgeois, Renault, Frederic de Martens and Fiore, of whom three are members of the Permanent Court of Arbitration at the Hague, and all of whom are recognized authorities on international law, assert posi-

tively that an *arbitration over boundaries*, by its very nature, may not vary the status of states, or transfer provinces from one to another, nor may it pass from one to another any but such small parcels of land as may be necessary to regularize the frontier.

Yet it is evident that the Arbitrator can fix the boundaries between Peru and Ecuador only by derogating from the rights possessed by one or the other state over the territorial confines to be delimited.

What is the arbitrator's status in such a situation? Surely he must first decide whether in his judgment he is to determine the question of ownership or proceed in accordance with the hypothesis that it has already been determined; or else he must declare himself incompetent to proceed with the arbitration, unless he considers, as we conceive the case to be, that he is empowered by the parties to make such findings as to territoriality as may be necessary to solve definitively the question of *boundaries* submitted to him by them.

It is clear that Ecuador, from the moment she makes claim to territories possessed by Peru, recognizes the jurisdiction of the arbitrator to decide to whom they belong.

With respect to Peru, the Arbitrator must hold with the following declarations as to the points in litigation.

In the prayers attached to her *Brief* of December 10, 1889, she asks the arbitrator to find: 2d, that to the Viceroyalty of Peru belonged, (a) the territories of the Comandancia general of Maynas, conformably with the disposition made by the Royal Decree of 1802, (b) the territories of the District of Piura, in the Intendency of Trujillo, (c) the territories of the Gobierno of Guayaquil. She accepts the compensation of Guayaquil for Jaén, and asks in conclusion that the divisionary line be established along the points mentioned therein.

In the *note* addressed by the Peruvian Minister Plenipotentiary to the Minister of State of Spain on the 12th of November, 1904, it was made clear, as we have said, that in the conference referred to, he had stated in behalf of his government, that "the object of the arbitration is to decide to which of the two sovereignties belonged the *territories* claimed exclusively by both Peru and Ecuador, and consequently to declare *the entire line* of the frontier between the two states."

In her *Final Memorial* of June 1, 1906, Peru states: "By the character of Arbitrator *juris* cast upon your Majesty it is shown

that the parties being unable to arrive at a compromise as permitted by the treaty itself (the arbitral convention of 1887), *ask for a decision* of strict right, to be *based* on the two points in controversy: 1st, whether there is any foundation in justice in Ecuador's *claim* that Peru should deliver over to her the *provinces* of Tumbes, Jaén and Maynas, with which she has been constituted since the independence, and, 2d, as to the geographical line that ought to separate the *provinces* indicated from the contiguous Ecuadorian provinces" (vol. III, p. 143). And in the prayers of the memorial the arbitrator is asked "to reject, in express terms, Ecuador's demand for restitution and to fix the frontiers of the boundary provinces" (vol. IV, p. 155).

The question of right on the part of Ecuador concerning the provinces of Tumbes, Jaén and Maynas, being, therefore, at issue, and the arbitrator having been asked by Peru to determine whether "there is any foundation in justice" in the claim to those provinces, and to reject Ecuador's demand for restitution in express terms, the Arbitrator not only has the power to make the *findings* prayed for, but it is his duty so to find, and with so much the more reason, for otherwise the divisionary line could not be established.

We believe, therefore, that the award should be made up of two parts: one *declarative*, with respect to the questions of law raised in the proceeding by the claims formulated by the litigant states, and as to which decision is necessary to settle the question of boundaries; and the other *conclusive*, establishing that divisionary line.

From the geographical point of view the question of boundaries is divided into three parts: that of Tumbes, that of Jaén and that of Maynas, not taking into account that section of the frontier formed by the Macará river, because the parties on that point are agreed.

§III. Criterion for Solution of the Questions at Issue.

1) **The Strict Right.**—The arbitral convention of August 1, 1887, provides positively, in its first article, that the question submitted to His Majesty the King of Spain must be decided by him "*as Arbiter of the right.*" The arbitrator, therefore, can resolve them under no other criterion than that of right. If any doubt arises on this point, it can be dissipated only by comparison of the proposals for treaties put forth as a result of the direct negotiations under-

taken in accordance with Article 6th, the failure of which brought about the return to the arbitration *juris*.

The supplemental arbitral agreement, signed at Lima on the 15th of December, 1894, by the Plenipotentiaries of Colombia, Peru and Ecuador, provided in its first article: "Colombia acquiesces in the arbitral convention between Peru and Ecuador of August 1, 1887, ratifications of which were exchanged at Lima on the 14th of April, 1888; but the three high contracting parties stipulate that the Royal Arbitrator shall decide the questions material to the dispute upon the consideration, *not only* of the titles and arguments of *law* which have been presented, and which may be presented to him, *but also* of the *accommodation* of the contracting parties so conciliated that the frontier line may be founded in law and *equity*" (D. M. P., No. 43).

On the disapproval of that agreement, the parties returned to the convention of 1887, making no modifications therein whatsoever, and consequently returned to the criterion of strict right, unweakened by considerations of *accommodation and equity*.

That arbitral convention of 1887 leaves the arbitrator at full liberty in his application of the law, uncontrolled by any basis whatever. We have already stated the principles that in our judgment ought to govern the arbitrator in his consideration of the questions submitted for his decision. His Majesty the King of Spain, solely by virtue of the fact that he has been appointed arbitrator of the right, and with no limitations whatever, enjoys under that convention the same freedom conferred on His Majesty the King of Italy by the arbitral convention of November 6, 1901, for the settlement of the boundary question between Great Britain and Brazil, which in its fourth article stipulates that: "In deciding the question submitted to him, the arbitrator shall confirm all the facts he may consider necessary to examine in the settlement of the controversy, and shall be controlled by the *principles of international law* he may deem applicable to the case."

2) **No Room for Compromise.**—The present arbitration being one of strict right, the arbitrator may not proceed to compose amicably the differences before him: nor may he take into consideration, as precedents, the proposals for compromise—this not only because those proposals were not carried out, but because the *compromises* responded to the accommodation of the parties, which could only be estimated by the interested parties themselves, with reference to

their situation, the desire to avoid further injury, the circumstances and the times.

To confirm their explanation, we need not restate the history of those proposals for compromise which have been a part of the diplomatic negotiations of Peru with Colombia and with Ecuador; we limit ourselves to the statement that they were never approved or duly carried out and to quoting what Peru's *Final Memorial* has to say on that point:

"Peru cannot accept today a compromise depriving her of provinces and territories constituting, actually and not theoretically, the most vital part of her nationality. This is so true that the García-Herrera compromise, although much better than the Colombian proposals of 1829, was not accepted by the Congress of Peru in 1893. Furthermore, thanks to the expenditure of Peruvian money, from 1893 to 1905, a period of twelve years, the development of the east (Maynas), has been immense; so that even the compromise line suggested by the Peruvian Congress in 1893, and much more advantageous than that of the García-Herrera treaty, would be to-day unanimously and peremptorily rejected. This is the reason why at present no compromise can be thought of except in the application of strict right. Peru, who, in 1894, resigned herself to equitable arbitration, surely would not accept it to-day. The absolute integrity of *her right* is necessary and she asks for it; any limitation of that right would be profoundly unjust, since by her efforts those territories have become valuable" (M. P., vol. I, p. 235).

RESUME AND CONCLUSIONS.

RÉSUMÉ AND CONCLUSIONS.

The Study of the Question of Boundaries between Peru and Ecuador Concluded, I pass on to a résumé at the same time as I synthetise my opinions concerning the question, and, in order to make my reasoning more concrete, adopt the form of "*considerandos*," as follows:

1st.

Considering that with a view to putting an end amicably to "the pending boundary questions" between the Republics of Peru and Ecuador, the governments agreed in the convention concluded at Quito on the first of August, 1887, to submit "said questions to His Majesty the King of Spain for his decision as arbiter of the right, definitively and without appeal": a convention called arbitral which, once ratified by the respective congresses and the ratifications exchanged on the 14th of April, 1888, became the common law for both parties, which after acceptance of the arbitration by the Royal Arbitrator on the 24th of December following, became the legal basis of the present arbitration, and which, though suspended in 1891 at the request of the parties for the purpose of undertaking direct negotiations, was resumed in 1904, on their petition, and with the acquiescence of His Catholic Majesty.

2d.

Considering that the parties to the arbitral convention did not specify what were the pending questions, either on the occasion when His Majesty's acceptance of the arbitration was sought, or subsequently, when he was requested to proceed therewith, it is left wholly to the discretion of the Royal Arbitrator to determine what

questions have and what have not been settled; that this is the more true because, on the resumption of the proceedings, the briefs in which each of the parties sought to resolve certain of the questions in its own favor were already on file, and, notwithstanding the Plenipotentiaries of the two countries, in *notes of like tenor*, addressed on the 21st of November, 1904, to the Spanish Minister of State, stated that the conditions of the arbitration of right agreed to in 1887 had not been modified; that *all* the questions of boundaries continued under submission to the Royal arbitrator, and that the power was conferred on him to make such rulings as in his judgment might conduce to making clear the rights in controversy; to which notes the Minister of State replied on the 23d of the following month, also making it clear that the conditions of the arbitration of right agreed to in 1887 had not been modified and that all the questions of boundaries pending between the two nations continued under submission to the Royal Arbitrator.

3d.

Considering that Ecuador, in her brief of 1892—that is, the Statement of Sr. Herrera, with its attached Memorial on the facts and law—maintains that the general question of boundaries is decided in the treaty of Guayaquil of 1829 and demands fulfilment of its provisions; that, in her Final Memorial, she maintains that the question was closed by the Pedemonte-Mosquera protocol, and that only the determination of the Jaén frontier is left pending; which assertions and claims, however, may not be taken into consideration by the arbitrator as limitations on his powers, since they were not imposed on the occasion of the agreement to and acceptance of the arbitration, but were brought forward as the fundamentals of the rights and aspirations the party litigant formulates in the proceeding and submits for the consideration of the judge.

4th.

Considering that the treaty of Guayaquil of 1829 may be invoked in this litigation only as an historical antecedent of the question, and not as a treaty exerting obligatory force or as a basis for its decision: 1st, because international compacts obligate only the

states entering into them under mutual relations, one with the other, and do not obligate other states, or when there is an absence of mutuality in the relations, and the treaty of Guayaquil was entered into by Peru with the first Republic of Colombia, and not with Ecuador, who had not yet come into existence; 2d, because the state of Ecuador was born in 1830 when Colombia dissolved and was not made the heir of the latter before the dissolution; nor did Ecuador so claim at the time of her formation by the union of three of the departments of the defunct state which had declared themselves independent, nor would their heirship, even if it had existed by cession of the rights of Colombia, have been valid so long as it was not recognized by Peru; 3d, because even though it is admitted that on the dissolution of a state the facts accomplished must be respected (for example, the boundaries already established), or pending matters must be settled (*e. g.*, the matters of indebtedness), neither of these considerations applies in the present case, since the treaty of 1829 did not resolve the question of boundaries but left it pending upon conditions impossible to be fulfilled by the state that disappeared, and with which the other had agreed to comply only because of its accord with the situation in which both found themselves; 4th, because the treaty of 1829 was in itself imperfect, in that it had not been approved by the Congress of Colombia, as required by its constitution, when that republic dissolved, and it is impossible to-day to fulfill that prerequisite which Bolívar might have attended to by presenting the treaty for legislative ratification in conjunction with the boundary agreement, as he had thought of doing; 5th, because, even if the treaty of 1829 had not lapsed through the demise of Colombia, it was annulled by the treaty of 1832 between Peru and Ecuador, whereby the states recognized each other and agreed, without any mention whatever of the treaty of 1829, to the preservation of the boundaries then possessed by them until a special agreement could be entered into, the Ecuadorian Plenipotentiary having declared, before the signing of that agreement, that he did not recognize the treaties of Colombia.

5th.

Considering that the existence of the Pedemonte-Mosquera protocol of 1830 has not been proven, since the document presented by

Ecuador is but a copy of a manuscript, or rough, unsigned draft found among the papers of a private individual, although bearing names as though the original had been signed, all of which leads to the belief that no such protocol ever existed: 1st, because the duplicates that would have been signed and made official for each of the parties have not been found; 2d, because it was supposed to have been signed at Lima on the 11th of August, by General Tomás Mosquera as Plenipotentiary of Colombia, whereas the fact was that he had ceased to perform the duties of his mission on the 24th of July, and had embarked at Callao on the 9th of August, sailing from that port on the 10th, *en route* to his own country; 3d, because, in a book published in 1843, General Mosquera admits that he left without concluding the settlement of boundaries and does not mention or refer to Sr. Pedemonte, who, until the 2d of August, had not taken charge of the Peruvian Ministry of Foreign Relations: 4th, because no allusion is made to the protocol in any document, nor does Sr. Valenzuela, who certified to the copy of the manuscript, and well informed as he was as to those matters, cite it in the memorial he wrote, in 1893, under the direction of the Colombian government.

6th.

Considering that, even admitting the Pedemonte-Mosquera protocol, it would be without validity or effect: 1st, because on the date of its supposed signature, the Republic of Colombia was no longer in existence, Ecuador had constituted herself into an independent state, and Mosquera lacked, therefore, the representative quality and the power necessary to treat; 2d, because, according to that manuscript, the compromise remained pending what should be resolved concerning the disposition of Jaén; 3d, because such a compromise was opposed to the stipulations of the treaty of Guayaquil, which recognized the possession of the respective territories and permitted only the cessions and compensations of such "small parcels" as might be necessary to regularize the frontier; 4th, because the alleged agreement by way of protocol was not ratified by the respective governments, nor could it have been ratified without previous legislative approval.

7th.

Considering that, as shown by Peru in her Final Memorial, the question whether Ecuador has or has not the power to alienate Canelos cannot be held to be the only question of boundaries pending, since, although it is true that both states were living in quiet and peaceful possession of the frontiers of their respective provinces, when, for the purpose of defining the lands of Canelos that Ecuador proposed to cede to an English company, the arbitration was agreed to in 1887, it is no less true that the special agreement for the settlement of boundaries referred to in the treaty of 1832 remained still to be carried out, and if, when the arbitral convention was agreed upon, it had been desired to reduce the question of boundaries to the question of the delimitation of said lands, that would have been expressly stated.

8th.

Considering that the pending questions of boundaries are those referring to that settlement of boundaries which, according to Article 15th of the treaty of July, 1832, remained pending the negotiation of a special agreement: a settlement of boundaries which, because of the failure to negotiate such an agreement, and as the parties failed in their direct negotiations to arrive at an understanding, the Royal Arbitrator must make, and not by way of compromise but on the merits.

9th.

Considering that, from a comparison of the divisionary line ultimately sought by Ecuador in this proceeding with that asked for by Peru, it results that the litigants are agreed as to the recognition of the Macará and Alamor rivers as parts of their frontiers, it should for that reason be so decided.

10th.

Considering that, according to the result of such comparison, Ecuador claims a good part of the littoral province of Tumbes, all

of the province of Jaén and a considerable portion of the departments of Loreto and Amazonas—that is to say, the northern Marañón region—provinces and departments belonging to-day to Peru.

11th.

Considering that, on the birth of Ecuador in 1830 and her recognition by Peru in the treaty of 1832, the latter already embraced the provinces of Tumbes, Jaén and Maynas (composing in early times the Amazonas region), and which formed, with the other provinces, united into a single body politic, the Peruvian nation, Ecuador had not made any claim thereto on the negotiation of that treaty, thus signifying that she recognized Peru as then organized and constituted, and that that recognition is confirmed by Article 15th, which maintains the *status quo* of the boundaries so long as the parties by common consent shall not modify them.

12th.

Considering that, notwithstanding that recognition—though conclusive in international law as to questions of territorial sovereignty, whatever may have been the origin of possession—Ecuador now demands those provinces, or parts of them, basing her demand on the contention that they had belonged to the Viceroyalty of Santa Fe, and, on the extinction of that entity, to Colombia.

13th.

Considering that the province of Tumbes had never belonged to the Viceroyalty of Santa Fe, because it had always formed a part of the Corregimiento of Piura, which was embraced in the Audencia District of Lima and belonged to the Viceroyalty of Peru; that doubts occasioned by the provision of Law 10, Title 15, Book II, of the *Compilation of the Indies* that the Audiencia of Quito should extend along the coast as far as the port of Paita, exclusive, disappear with the single observation that that law also fixed upon Piura as the limit; that according to Law 1, Title 2, Book V, of the same

Code, the port of Paita and the city of San Miguel de Piura formed a single corregimiento embraced in the audiencia district of Lima, and that in the descriptions of the period the towns, with their territorial jurisdictions, were understood; that it is further proven that from the time of its establishment Tumbes, with its district, figured constantly in the Corregimiento of Piura, and the Presidency of Quito so recognized in the proceeding for the sale of the plantation of Sarumilla, begun in 1789, wherein it is shown that said plantation, bounding on the Machala and the watersheds of Saruma, was granted by the cabildo (municipality) of Piura in 1627, with the approval of the Viceroy of Lima, and was retained in the jurisdiction of Tumbes.

14th.

Considering that, although the Gobierno of Guayaquil passed into dependency on the Viceroyalty of Santa Fe, or New Granada, when that entity was created in 1717, and, after having been suppressed and re-established in 1739, it (Guayaquil) was reincorporated into the Viceroyalty of Peru by royal order of July 7, 1803; that the aggregation to the latter viceroyalty was declared "absolute" by the royal order of February 10, 1806, and that the Viceroyalty of Peru took cognizance of all classes of matters arising in connection with that province down to the independence, since, although the royal decree of June 23, 1819, excepted matters of justice and finance, it may be assumed that because of the state of insurrection in which the Viceroyalty of Santa Fe found itself, the provision was never carried into effect; that Guayaquil was so united with the Viceroyalty of Peru in political matters that the deputy who represented it in the Supreme Central Junta of Spain in 1809 was elected by that province.

15th.

Considering that, even when the Gobierno of Jaén also passed over to the Viceroyalty of Santa Fe, the province remained dependent on the Bishopric of Trujillo and under the Vicepatronate of the Viceroy of Lima, and that when, by the royal order of June 1,

1784, its re-incorporation with the Viceroyalty of Peru in political matters was authorized, the Viceroy of Santa Fe did not regard the disposition as of sufficient importance to excite his antagonism but recognized its appropriateness in the record of the investigation instituted by the Viceroy of Lima covering the period from 1788 to 1792.

16th.

Considering that, under the Royal Decree of July 15, 1802, the Gobierno and Comandancia general of Maynas was formed by the union of the ancient Gobiernos of Quijos and Maynas; that in the new gobierno were embraced the territories of the Marañon, and all its northern and southern affluents as far as the territories of the Portuguese colonies; that those gobiernos and territories were segregated from the Viceroyalty of Santa Fe and from the province of Quito, and aggregated to the Viceroyalty of Peru, and that the extent of the gobierno and comandancia general was completed by the addition of the towns of Lamas and Moyobamba, which already belonged to that Viceroyalty.

17th.

Considering that that Royal Decree of 1802, whereby there was incorporated into the Viceroyalty of Peru the whole of the Amazonas region, was possessed of full legal sufficiency in accordance with Spanish colonial law; that it was enacted at the instance and with the concurrence of the Supreme Council of the Indies after an extensive investigation begun in 1777, as a result of which the measure was favorably reported on by the Presidency of Quito and the Viceroy of Santa Fe; that it was obeyed and fulfilled by all the authorities, and published and notified, town by town; that it was confirmed by the royal orders of 1805, 1818 and 1819, rejecting proposals and petitions for reforms in the organization affected thereby; that in practice it was put into execution, as evidenced by the very existence of the Gobierno and Comandancia general of Maynas, by the authority exercised over its governors by the Viceroy of Peru, by the very powers possessed by those viceroys to

appoint the governors in the intervals pending action by the Crown, and by the numerous matters of all kinds going to show the continued administration of the Viceroy's down to the independence, and that the Royal Decree has never been annulled.

18th.

Considering, then, that on the extinguishment of the Viceroyalty of Santa Fe, or New Granada, the provinces of Tumbes, Guayaquil and Maynas did not, under Spanish colonial law, belong to that viceroyalty but to the Viceroyalty of Peru, on which Jaén also depended in matters ecclesiastical and lacked only compliance with the royal order authorizing its reincorporation to depend thereon in civil matters as well.

19th.

Considering that the declaration by the Congress of Angostura in 1819, and by that of Cúcuta in 1821, that the territory of the republic of Colombia should be the same as that embraced in the Captaincy general of Venezuela and the Viceroyalty of New Granada, was not made in the name of the Spanish sovereign, but in representation of the provinces which had sent their deputies; that such declarations cannot, therefore, possess greater value than is given to them by the provinces represented in those congresses, and that the provinces of the Audiencia of Quito were not represented therein.

20th.

Considering that, on the emancipation of the provinces of Quito, Cuenca and Loja after the battle of Pichincha, in May, 1822, they united with Colombia, forming the department of Ecuador so-called; that Guayaquil, which, since 1820 had existed in a state of independence, annexed itself to said republic on the 31st of July, 1822, forming the maritime Department of the South, and that, by those combinations, the provinces mentioned, together with the Venezuelan

and ancient Granadan provinces, went to constitute Colombia, not by virtue of colonial law, but by the principle of the sovereign right of emancipated peoples freely to constitute themselves.

21st.

Considering that, by the treaty of amity and alliance of July 6, 1822, between Colombia and Peru, the two states recognized each other as independent; that an integral part of the latter was formed by the provinces of Tumbes and Maynas which had belonged to the Viceroyalty of Lima and had manifested their adherence to and co-operation in Peruvian independence, while the province of Jaén, which achieved its own independence in May, 1821, had voluntarily incorporated itself in Peru, and also co-operated in bringing about her independence.

22d.

Considering that the treaty of 1822 above referred to, the only one that ever existed between Colombia and Peru which was possessed of binding force by virtue of the ratification of both congresses, respected the possession of territories and boundaries existing in the States at the time of the mutual recognition, leaving for a special agreement the demarcation of the "exact" boundaries, that is, the mere delimitation of territories.

23d

Considering that, until the occurrence of the political events resulting in the war of 1828-9, the relations between the two republics were cordial; that the *status quo* of the treaty of 1822 was maintained, while from Lima Bolívar governed the provinces of Jaén and Maynas as Peruvian provinces; that on the termination of the first period of the war by the peace agreement of Girón on the 20th of February, 1829, Colombia therein assumed the position of being completely restored to the possession of her territory by the restitution of Guayaquil by Peru, and the retirement of the Peruvian troops to a position south of the Macará; that in that agreement Colombia

made no claim to Jaén or Maynas; that on the conclusion of the war on the 10th of July by the armistice of Piura, by which Peru restored Guayaquil, and that, in the treaty of peace of September 22d, the *status quo* prior to the war was respected and no mention made of restitution, but that both parties were left in possession of their respective territories, the procedure for the adjustment of their boundaries established, and the cession authorized of only the small parcels of territory required to adjust the divisionary line, to the end that controversies between the authorities and inhabitants of the frontiers might be avoided.

24th.

Considering, then, that as the provinces of Tumbes and Maynas did not belong either in fact or law to the Viceroyalty of Santa Fe, on its extinguishment, or to Colombia, and that the province of Jaén also did not belong to that republic, Ecuador could not have taken those provinces as heir of the Viceroyalty of Santa Fe or of the Republic of Colombia, in the light of the well-known principle of *nemo plus juris ad alium transferre potest quam ipse habet*.

25th.

Considering that as the treaty of July 12th, 1832, is the only one entered into between Peru and Ecuador possessed of binding force, because duly approved and ratified, down to the time of the arbitral convention of 1887, Article 15th of that treaty would seem, in strict right, to be a sufficient settlement of the boundary question, for it is provided therein that those boundaries shall be the same that were possessed by the two states on the occasion when they were eventually recognized, with the provinces of which they were composed, so long as they were not modified by common consent, that is, by a special agreement; but that the parties, having resorted to an arbitration of the right, in order to settle the question, the arbitrator is placed in the position of being required to decide whether those boundaries are just or whether they ought to be modified in accordance with justice.

26th.

Considering that both parties are agreed as to the recognition of the principle known as that of colonial *uti possidetis*, accepted by the Spanish-American states—that is to say, the principle of retaining as their boundaries the same that were possessed by the colonial circumscriptions of which such states were formed—although they differ as to dates and the method of its application, since Ecuador seeks by that principle to re-establish the Audiencia of Quito as it was created in 1563, or as it was incorporated into the Viceroyalty of Santa Fe in 1739, and Peru asks for its application in adjusting the divisionary line of the boundary provinces as they were defined at the moment of the independence, the composition of each state to be respected.

27th.

Considering that the principle of *uti possidetis, ita possideatis* signifies the continuity of the possessory status, as expressed by the very words (as ye possess, so may ye possess) employed by the Roman praetor in the interdiction for “retention” of possession, for it refers to the present and future and not to the past; also as is understood in international law when treaties sanction by that formula the present possession, and as is made clear in the history of the formation of the Spanish-American states of which they were composed, which states did not cut short the life of the towns or recede from *possession*, but, on the contrary continued that possession, although under a new régime; and that it is natural that, after their independence, the towns should remain in possession of the territories and boundaries that had been theirs.

28th.

Considering, therefore, that the principle of colonial *uti possidetis* accepted by Ecuador cannot refer to the possessory status of the XVIth or the XVIIIth century, as she claims, but to that which existed, legally established, at the moment of emancipation, a legality which Ecuador cannot deny, since, by recognizing the sovereignty of

the Kings of Spain when they created the Audiencia of Quito and the Viceroyalty of New Granada, she must also, by virtue of that sovereignty, recognize that they could subsequently modify those royal dispositions by others segregating towns and territories and aggregating them to the Viceroyalty of Peru.

29th.

Considering that, although the Spanish-American states were formed on the basis of the great colonial circumscriptions called viceroyalties or captaincies-general, the right possessed by those great circumscriptions to unite among themselves must not be ignored, nor can the right be denied to the lesser circumscriptions, embraced therein under the general term "provinces," to pass from one to the other as the new states constituted themselves or to remain independent, by virtue of the principle of the sovereignty of emancipated peoples; and that such right is even more firmly entrenched since those states were born of the voluntary union of provinces which remained their own masters on the extinguishment of the common government of the viceroys and captaincies-general.

30th.

Considering that by that right, emanating, as it does, from the principle of the sovereignty of emancipated peoples, the province of Jaén, which had been a dependency of the Viceroyalty of Lima in ecclesiastical matters and the aggregation of which to that viceroyalty in political matters had been authorized by the Spanish sovereign, could incorporate itself in the state of Peru as soon as its self-achieved emancipation had been effected, just as the province of Guayaquil, which had been a dependency of the Viceroyalty of Lima, could annex itself to Colombia.

31st.

Considering that Ecuador has recognized that right as residing in the independent provinces to form states or incorporate themselves in others, since she herself is so constituted from the voluntary

union of the three provinces detached from Colombia, and since, by depending upon that principle of sovereignty, she justified and defended the absorption of Cauca, which separated from New Granada in order to unite with her.

32d.

Considering that the State of Peru has been legally possessed of the provinces of Tumbes, Jaén and Maynas from its constitution in 1821 down to the present day, organizing and administering them and developing their interests, and that those provinces demonstrated their desire to continue the union with Peru at the very time of the dissolution of Colombia and birth of Ecuador, swearing to the constitution of Peru and enjoying continuous representation in her congresses.

33d.

Considering that the recognition of a state carries with it the recognition of its sovereignty in the provinces forming its integral parts, and that such recognition on the part of Colombia and Ecuador of the State of Peru, with its provinces, is shown by the treaties of 1822 and 1832, and on the part of all the nations by the treaties Peru entered into with them; and that with respect to her sovereignty in Maynas, the Bull of 1843 of His Holiness, Gregory XVI, acceding to Peru's petition to create the Bishopric over the whole of the territory of Maynas, which was coextensive with the *gobierno* and *Comandancia general* of that name, must be borne in mind, as also the treaties with Brazil, especially that of 1851 establishing the Amazonas frontier in recognition of the rights of Peru over that region under the Royal Decree of 1802 and the principle of *uti possidetis*.

34th.

Considering that once the doctrine of colonial boundaries is admitted—not for the purpose of reconstructing the great circumscriptions of the colonial régime as created, but for the purpose of deter-

mining the frontier between the states of Ecuador and Peru as made up of the provinces composing them from the time of their birth and with which they were recognized as such states—the adjustment of that frontier depends on the evidence produced as to the boundaries common to the Peruvian and Ecuadorian provinces at the time of their emancipation from Spain.

35th.

Considering that both parties have recognized as the divisionary line between the Peruvian Department of Piura and the Ecuadorian Department of Loja, the line formed by the Alamor river from its headwaters to its disemboguement in the Chira, or Macará, and the entire course of the Macará from that point to its source, for which reason it is not necessary to cite the demonstrations made by Peru of that part of the frontier.

36th.

Considering that Peru has abundantly proven that the Tumbes river cannot be the divisionary line between her littoral province of that name and Ecuador, as the latter claims, because the city of Tumbes itself would thereby be excluded from Peru, together with the northern part of the jurisdiction of the city as embraced in the ancient Corregimiento, and later in the District of Piura, but that that divisionary line ought to be constituted by the Machala, Jubones, or Yamón, river and the line connecting that river, from the point at which the boundary of Guayaquil terminates, with the headwaters of the Alamor river, passing through the watershed of Saruma, for thus the divisionary line is established by the memorials, geographical descriptions and title deeds to country properties filed in the case, and especially by the documents relating to the plantation of Sarumilla, which was sold in accordance with the proceeding instituted before the Presidency of Quito in 1789, wherein it was established that said plantation was in the jurisdiction of Tumbes and bounded by the Machala river and the watersheds of Saruma, and continued in that jurisdiction until its sale by an heir of the purchaser in 1825.

37th.

Considering that as the province of Jaén is enclosed on the west, south and east by what has always been Peruvian territory and forms in fact and law a part of the State of Peru, as has been shown, nothing remains but to establish its northern boundary, its only frontier line with Ecuador—a line completely determined by the Canchis river from its source, which almost touches that of the Macará as far as its disembogement in the Chinchipe—for, although the ancient Gobierno of Jaén extended farther toward the north, Peru asks only for recognition of that line because the towns which voluntarily incorporated themselves with her on the emancipation in 1821 only extend that far.

38th.

Considering that as the validity of the Royal Decree of July 15, 1802, as well as its practical effectiveness and stability, has been demonstrated down to the moment of the independence, the frontier boundaries of the Amazonas region of Peru must be determined in accordance therewith—that is, they must be found to be the same as those of the Gobierno and Comandancia general of Maynas and of the Bishopric of that name.

39th.

Considering that it is evident that said Royal Decree included in the Gobierno and Comandancia general of Maynas the ancient Gobierno of Quijos, with the exception of the town of Papallacta, and that, for that reason, the line separating the terminal of that town from the other towns of Quijos becomes at once the indisputable frontier boundary.

40th.

Considering that the Royal Decree of 1802 provides conclusively that the Gobierno and Comandancia general shall extend “not only along the lower Marañón to the frontiers of the Portuguese colonies but also along the other rivers emptying into the Marañón on its northern and southern banks, such as the Morona, Gualлага, Pastaza, Ucayali, Napo, Yavarí, Putumayo, Yapurá and others less considerable, as far up in each as the point at which, by reason of

its falls and inaccessible rapids, it ceases to be navigable"; that consequently it embraced all the territories watered by those rivers, it being impossible to admit the hypothesis that the intermediate areas, cut off and isolated by them in different directions, should remain under the government of the Viceroyalty of Santa Fe, and that the Decree embraced them as far up as the points at which the rivers cease to be navigable because of their falls and inaccessible rapids, the term "navigation" meaning not by modern vessels, but by those small boats, canoes and launches, then used by the Indians, missionaries and authorities in crossing the territories and travelling about.

41st.

Considering, therefore, that in strict observance of that general rule, the western line of the Gobierno and Comandancia general of Maynas was that uniting in the Amazonas rivers the points inaccessible to navigation and that those points constitute positive terminals for demarcation, for which reason Peru asks that on this theory the Agoyán falls and the Pastaza and the point in the neighborhood of the town of Paute at which the river of that name (or the Santiago) ceases to be navigable be designated, in acceptance of the description of the Ecuadorian geographer, Villavicencio, who has been such a zealous defender of the interest of his country in this boundary dispute.

42d.

Considering that, serving as a complement to the description of the Gobierno and Comandancia general of Maynas made in general terms by the Royal Decree of 1802, there exists a description of the Bishopric of that name, which is coextensive therewith, prepared with greater detail inasmuch as it had to make clear the different origin of the ecclesiastical jurisdiction of parishes and missions which were grouped within the new diocese, and that this description expressly covers the parishes of the province of Quijos, except that of Papallacta, the curacy of Canelos on the Bobonaza and the parish of Santiago de las Montañas, and all the missions of Maynas, the missions on the lower Putumayo and those situated on the upper part of the same river, and on the Yapura, known as the Sucumbios

missions: towns and missions administered in temporal matters by the Governor and Comandante general of Maynas as shown by Peru.

43d.

Considering that, by virtue of what has been set forth and of the numerous documents filed by Peru containing descriptions by the civil and ecclesiastical authorities, in which are determined the towns and boundaries embraced in the Gobierno and Comandancia general of Maynas, there should be established as the western line of that gobierno the cordillera of the Andes, comprising on the north the headwaters of the Yapurá and of the Putumayo whereby the Sucumbios missions would be included, and continuing said line along the Chinchipe as far as its confluence with the Canchis, which constitutes thus the northern boundary of the province of Jaén.

The subscriber maintains:

That the Arbitrator should *find* that the frontier between Peru and Ecuador ought to be so established as to leave within Peru the littoral province of Tumbes, the Department of Piura, the province of Jaén and that which was the Gobierno and Comandancia general of Maynas, and that, therefore, the line uniting the following points should be *established* as the boundaries of the Republic of Peru:

The Machala river.—The watersheds of Saruma.—The Alamor river and the Pilares ravine.—The Macará river from the disembouement of the Alamor to its source in the Espíndula ravine.—The Canchis river, as far as its confluence with the Chinchipe.—The town of Paute.—The falls of Agoyán.—The eastern chain of the Andes, known successively as the Cotopaxi, Cayamburu, Andaquíes and Mocoa.—The Yapurá river, from its source to the disembouement of the Apaporis.

The foregoing *opinion* is respectfully submitted to a more enlightened judgment and signed at

Madrid, on the 28th of July, 1907.

DR. V. SANTAMARÍA DE PAREDES.

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